S. Hrg. 100-845

INDIAN CHILD WELFARE ACT

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

S. 1976

TO AMEND THE INDIAN CHILD WELFARE ACT

MAY 11, 1988
WASHINGTON, DC

U.S. GOVERNMENT PRINTING OFFICE
89-069 WASHINGTON : 1988

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S411-3

SELECT COMMITTEE ON INDIAN AFFAIRS

DANIEL K. INOUYE, Hawaii, *Chairman*
DANIEL J. EVANS, Washington, *Vice Chairman*

JOHN MELCHER, Montana	FRANK H. MURKOWSKI, Alaska
DENNIS DeCONCINI, Arizona	JOHN McCAIN, Arizona
QUENTIN N. BURDICK, North Dakota	
THOMAS A. DASCHLE, South Dakota	

ALAN R. PARKER, *Staff Director*
PATRICIA M. ZELL, *Chief Counsel*
JOE MENTOR, Jr., *Minority Counsel*

CONTENTS

Page

S. 1976, text of ... 3

Statements:

- Blanchard, Evelyn, vice president, National Indian Social Workers Association, Portland, OR ... 95
- Brown, Eddie F., director, Arizona Department of Economic Security, Phoenix, AZ ... 58
- Flint, Robert B., counsel and board member, Catholic Social Services, Anchorage, AK ... 68
- Gradstein, Marc, attorney at law, San Francisco, CA ... 81
- Inouye, Hon. Daniel K., U.S. Senator from Hawaii, chairman, Select Committee on Indian Affairs ... 1
- Leavitt, David Keene, Esq., Academy of California Adoption Lawyers, Beverly Hills, CA ... 88
- Ligtenberg, Eugene, division director, the Casey Family Program, Rapid City, SD ... 64
- Lui, Violet A.P., attorney, the Navajo Nation, Department of Justice, Window Rock, AZ ... 92
- Orrantia, Rose Margaret, executive director, Indian Child and Family Services Consortium, Esconido, CA ... 99
- Swimmer, Ross, Assistant Secretary for Indian Affairs, Department of the Interior, Washington, DC ... 46

APPENDIX

Prepared statements:

- Anderson, Owanah, staff officer, Native American Ministries, Episcopal Church ... 201
- Blanchard, Evelyn (with attachments) ... 161
- Brown, Eddie F ... 115
- Darcy, Cindy, Friends Committee on National Legislation ... 201
- DeConcini, Hon. Dennis, U.S. Senator from Arizona ... 171
- Evans, Hon. Daniel J., U.S. Senator from Washington, vice chairman, Select Committee on Indian Affairs ... 126
- Ewald, Elwyn, executive director, Evangelical Lutheran Church in America, Office for Governmental Affairs ... 201
- Flint, Robert B ... 129
- Gradstein, Marc (with letters) ... 133
- Leavitt, David Keene ... 152
- Ligtenberg, Eugene ... 122
- Orrantia, Rose Margaret ... 169
- Parks, Mary, Friends Committee on National Legislation ... 201
- Pierce, William L., Ph.D., National Committee for Adoption ... 174
- Slagle, Allogan, assistant executive director, Evangelical Lutheran Church in America, Office for Governmental Affairs ... 201
- Swimmer, Ross (with letters) ... 109

Additional material submitted for the record:

- Lui, Violet A.P., article, "The Battle over Baby K" ... 213

Reports:

- Berlin, Irving N., Anglo Adoptions of Native American: Repercussions in Adolescence ... 218
- Three Feathers Associates, Norman, OK, Indian Child Welfare: A Status Report ... 220
- Westermeyer, Joseph, Ethnic Identity Problems Among Ten Indian Psychiatric Patients ... 232

INDIAN CHILD WELFARE ACT AMENDMENTS

WEDNESDAY, MAY 11, 1988

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9:07 a.m., in room 485, Russell Senate Office Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senators Inouye, DeConcini, Evans, and Murkowski.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. The committee will please come to order.

This morning, we gather to consider S. 1976, a bill to amend the Indian Child Welfare Act of 1978.

It has been ten years since this act was enacted. In oversight hearings on this act held in 1984, concerns were expressed that the full intent of the act was not being achieved. On November 10 of last year, this committee held additional oversight hearings.

From the testimony received at that hearing, it was clear that funding for programs authorized by the act has always been deemed inadequate and has grown worse over the years. Coordination between the Department of the Interior and the Department of Health and Human Services in complimentary programs under their respective jurisdictions has not been realized. Cooperative efforts between the States and the tribes have not been consistent. And divergent decisions among the State courts in implementing the provisions of the act have led to some legal uncertainties in interpretation of the act.

The committee received testimony from two witnesses in our November hearing recommending extensive amendments to the Indian Child Welfare Act. The recommended amendments represented long and hard work among persons active in the Indian child welfare field, including attorneys, Indian social service personnel, and State social service agencies.

While the proposed amendments did not have the support of all the witnesses testifying, it was clear that they represented a starting point for addressing many of the issues identified in our hearings.

On December 19, 1987, my distinguished colleague and vice chairman of the committee, Senator Evans, introduced S. 1976 along with nine co-sponsors, including myself. This is our first hearing on this bill, and I do not anticipate that this bill will move forward without amendments.

I would, however, note that there is very strong support for the basic concept of the Indian Child Welfare Act, and I believe it is important that the act be implemented as fully as possible.

We have a number of witnesses today, and our time is obviously limited. I urge each witness to summarize your statement to allow time for questions and answers. I would like to assure all that your full statements will appear in the record.

[The text of S. 1976 follows:]

II

FILE COPY

100TH CONGRESS
1ST SESSION

S. 1976

To amend the Indian Child Welfare Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 19 (legislative day, DECEMBER 15), 1987

Mr. EVANS (for himself, Mr. INOUYE, Mr. MCCAIN, Mr. HARKIN, Mr. DECONCINI, Mr. DASCHLE, Mr. BINGAMAN, Mr. PRESSLER, Mr. BURDICK, and Mr. WIRTH) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

A BILL

To amend the Indian Child Welfare Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION. 1. SHORT TITLE.

That this Act may be cited as the "Indian Child Welfare Act Amendments of 1987".

SEC. 2. REVISION OF INDIAN CHILD WELFARE ACT.

The Indian Child Welfare Act of 1978 (25 U.S.C. 1901, et seq.) is amended to read as follows:

"SHORT TITLE AND TABLE OF CONTENTS

"SECTION. 1. This Act may be cited as the 'Indian Child Welfare Act of 1978'.

"TABLE OF CONTENTS

"Sec. 1. Short title and table of contents.
"Sec. 2. Congressional findings.
"Sec. 3. Declaration of policy.
"Sec. 4. Definitions.

"TITLE I—CHILD CUSTODY PROCEEDINGS

"Sec. 101. Jurisdiction over Indian child custody proceedings.
"Sec. 102. State court standards and procedures.
"Sec. 103. Voluntary proceedings.
"Sec. 104. Challenges based on violations of Act.
"Sec. 105. Placement goals in State court proceedings.
"Sec. 106. Subsequent placements or proceedings.
"Sec. 107. Tribal and family affiliation; disclosure by court.
"Sec. 108. Reassumption of exclusive tribal jurisdiction.
"Sec. 109. Agreements between States and Indian tribes.
"Sec. 110. Improper removal of child from custody.
"Sec. 111. Higher State or Federal standards to apply.
"Sec. 112. Emergency removal and placement of child.
"Sec. 113. Effective date.
"Sec. 114. Indian child welfare committees.
"Sec. 115. Compliance by private child placement agencies.
"Sec. 116. Aboriginal peoples of Canada.

"TITLE II—INDIAN CHILD AND FAMILY PROGRAMS

"Sec. 201. Grants for preventive programs on or near reservations.
"Sec. 202. Grants for off-reservation programs.
"Sec. 203. Funds for implementation of Act.
"Sec. 204. 'Indian' defined for certain purposes.

"TITLE III—RECORDKEEPING, INFORMATION AVAILABILITY, AND TIMETABLES

"Sec. 301. State reports.

"CONGRESSIONAL FINDINGS

"Sec. 2. Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—

"(1) that clause 3, section 8, article I of the United States Constitution provides that 'The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes' and, through this and other constitutional authority, Congress has plenary power over Indian Affairs;

"(2) that Congress, through statutes, treaties and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

"(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

"(4) that an alarmingly high percentage of Indian children are separated from their families and tribal heritage by the interference, often unwarranted, of their children from them by nontribal public and private agencies, and individuals, and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

"(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families;

"(6) that the Bureau of Indian Affairs, exercising federal authority over Indian affairs, has often failed to fulfill its trust responsibility to Indian tribes by failing to advocate rigorously the position of tribes with States and nontribal public and private agencies and by failing to seek funding and planning necessary for tribes to effectively fulfill their responsibilities to Indian children; and

"DECLARATION OF POLICY

"SEC. 3. The Congress hereby declares that it is this Nation's Policy to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards governing any interference with Indian children's relationships with their parents, family or tribe; also by providing for the placement of Indian children in foster or adoptive homes reflecting the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs. Furthermore, the Congress hereby declares its intent to protect the right of Indian children to develop a tribal identity and to maintain ties to the Indian community within a family where their Indian identity will be nurtured.

"DEFINITIONS

"SEC. 4. For the purposes of this Act, except as may be specifically provided otherwise, the term—

"(1) 'child custody proceeding' shall mean and include any proceeding referred to in this subsection involving an Indian child regardless of whether the child has previously lived in Indian country, in an Indian cultural environment or with an Indian parent—

"(i) 'foster care placement' means any administrative, adjudicatory or dispositional action, including a voluntary proceeding under section 103 of this Act, which may result in the placement of an Indian child in a foster home or institution, group home or the home of a guardian or conservator;

"(ii) 'termination of parental rights' means any adjudicatory or dispositional action, including a voluntary proceeding under section 103 of this Act, which may result in the termination of the parent child relationship or the permanent removal of the child from the parent's custody;

"(iii) 'preadoptive placement' means the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

"(iv) 'adoptive placement' means the permanent placement of an Indian child for adoption, including any administrative, adjudicatory or dispositional action or any voluntary proceeding under section 103 of this Act, whether the placement is made by a public or private agency or by individuals, which may result in a final decree of adoption.

"The term 'child custody proceeding' shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime. Such term shall also not include a placement based upon an award of custody to one of the parents in any proceeding involving a custody contest between the parents. All other child custody proceedings involving family members are covered by this Act.

"(2) 'domicile' shall be defined by the tribal law or custom of the Indian child's tribe, or in the absence of such law or custom by Federal common law applied in a manner which recognizes that (1) many Indian people consider their reservation to be their domicile even when absent for extended periods and (2) the intent of the Act is to defer to tribal jurisdiction whenever possible;

"(3) 'family' includes extended family members and shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, includes any person who has reached the age of eighteen and who, by blood or marriage, is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

"(4) 'Indian' means any person who is a member of an Indian or Alaska Native tribe (including any Alaska Native village), or who is an Alaska Native and a member of a Regional Corporation as defined in section 7 of the Alaska Native Claims Settlement Act (85 Stat. 688–689), any person of Indian or Alaska Native descent who is considered by an Indian or Alaska Native tribe to be a part of its community, or for purposes of sections 107, any person who is seeking to determine eligibility for tribal membership;

"(5) 'Indian child' means any unmarried person who is under age eighteen and is—

"(a) a member of an Indian tribe, or

"(b) is eligible for membership in an Indian tribe, or

"(c) is of Indian descent and is considered by an Indian tribe to be part of its community, or, for purposes of sections 107, any person who is seeking to determine eligibility for tribal membership; if a child is an infant he or she is considered to be part of a tribal community if either parent is so considered;

"(6) 'Indian child's tribe' means—

"(a) the Indian tribe in which the Indian child is a member or eligible for membership, or

"(b) in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts. For any of the purposes of this Act, the tribe with the more significant contacts may designate as the Indian child's tribe another tribe in which the child is a member or eligible for membership with the consent of that tribe;

"(7) 'Indian custodian' means any Indian person who has custody of an Indian child under tribal law or custom or legal custody under State law or to whom physical care, custody, and control has been voluntarily transferred by the parent of such child;

"(8) 'Indian organization' means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

"(9) 'Indian Tribe' means any Indian or Alaska Native tribe, band, nation, village or other organized group or community of Indians recognized as eligible for the services provided to Indians or Alaska Native by the Secretary because of their status as Indians or Alaska Natives, including any Alaska Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act (85 Stat. 688–689), as amended, those tribes, bands, nations, or groups terminated since 1940 who maintain a representative organization, and for the purposes of sections 101(c), 102, 103, 104, 105, 106, 107, 110, 111, and 112 of this Act, those tribes, bands, nations or other organized groups that recognized by the Government of Canada or any province or territory thereof;

"(10) 'parent' means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. Except for the purposes of section 103 (c) and (d), 104, 105(f), 106 (a) and (b), 107, 301, the term parent shall not include any person whose parential rights have been terminated. It includes the unwed father where paternity has been established under tribal or State law, or recognized in accordance with tribal custom, or openly proclaimed to the court, the child's family, or a child placement or adoption agency. For the purpose of section 102(a), it also includes an unwed father whose paternity has not been so established, recognized or proclaimed.

"(11) 'qualified expert witness' means—

"(a) a member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and childrearing practices; or

"(b) a person having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and childrearing practices within the Indian child's tribe; or

"(c) a professional person having substantial education and experience in the area of his or her specialty and who has general knowledge of prevailing Indian social and cultural standards and childrearing practices;

"(12) 'reservation' means Indian country as defined in section 1151 or title 18, United States Code and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

"(13) 'residence' shall be defined by the tribal law or custom of the Indian child's tribe, or in the absence of such law or custom, shall be defined as a place of general abode or a principal, actual dwelling place of a continuing or lasting nature;

"(14) 'Secretary' means the Secretary of the Interior; and

"(15) 'tribal court' means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

"TITLE I—CHILD CUSTODY PROCEEDINGS

"JURISDICTION OVER INDIAN CHILD CUSTODY PROCEEDINGS

"SEC. 101. (a) Notwithstanding any other Federal law to the contrary, an Indian tribe shall have exclusive jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where concurrent jurisdiction over voluntary child custody proceedings may be otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

"(b) In any State court child custody proceeding involving an Indian child not subject to the exclusive jurisdiction of a tribe, the court, shall transfer such proceeding to the jurisdiction of the Indian child's tribe absent an unrevoked objection by either parent determined to be consistent with the best interests of the child as an Indian, upon the oral or written request of either parent or the Indian custodian or the Indian child's tribe: *Provided,* That the court may deny such transfer of jurisdiction where the request to transfer was not made within a reasonable time after receiving notice of the hearing and the proceeding is at an advanced adjudicatory stage: *Provided further,* That such transfer shall be subject to declination by the tribal court of such tribe and that an oral or written request to transfer must be expressly revoked for such request to be deemed abandoned: *Provided further,* That a parent whose rights have been terminated or who has consented to an adoption may not object to transfer.

"(c) In any State child custody proceeding involving an Indian child, and any State administrative or judicial proceeding to review the foster care, preadoptive or adoptive placement of the child, the Indian custodian of the child, the parent of the child, and the Indian child's tribe shall have a right to intervene at any point in the proceeding. The Indian custodian, the parent, except as provided above, and the Indian child's tribe shall also have a right to intervene in any administrative or judicial proceeding under State law to review the foster care, preadoptive or adoptive placement of an Indian child. The Indian child's tribe may authorize an Indian organization or other Indian tribe to intervene on its behalf.

"(d) Whenever a non-tribal social services agency determines that an Indian child is in any situation that could lead to a foster care placement, preadoptive placement or adoptive placement and which requires the continued involvement of the agency with the child for a period in excess of thirty days, the agency shall send written notice of the condition and of the initial steps taken to remedy it to the Indian child's tribe within seven days of the determination. The tribe shall have the right to examine and copy all reports or other documents involving the child. The State agency shall not be liable for any harm resulting from its release of information to the tribe.

"(e) The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity. Differences in tribal practice and procedure that do not affect the fundamental fairness of the proceeding shall not be cause to deny full faith and credit to a tribal judicial proceeding. Full faith and credit may not be denied to a tribal proceeding without first providing an opportunity for the tribe to cure any alleged defect in practice or procedure.

"(f) Nothing in this section shall be construed to authorize a State to refuse to offer social services to Indians whether resident or domiciled on or off the reservation to the same extent that such State makes services available to all of its citizens.

"STATE COURT STANDARDS AND PROCEDURES

"SEC. 102. (a) In any involuntary child custody proceedings in a State court, where the court or the petitioner knows or has reason to know that an Indian child is involved, the party seeking the foster care, preadoptive or adoptive placement of, or termination of parental rights to, an Indian child, or who otherwise has initiated a child custody proceeding, shall notify the parent, Indian custodian, if any, and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings, of their right of intervention, and of their right to petition or request the court to transfer the case to tribal court. Whenever an Indian child is eligible for membership in more than one tribe, each such tribe shall receive notice of the pending proceeding. If the identity or location of the parent or Indian custodian and the tribe cannot be determined after reasonable inquiry of the parent, custodian and child, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No involuntary child custody proceeding shall be held until at least fifteen days after receipt of notice by the parent or Indian custodian and the tribe or until at least thirty days after receipt of notice by the Secretary: *Provided,* That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding, and adequate time to obtain counsel.

"(b) In any case in which the court or, in the case of an administrative proceeding, the administrator of the State agency determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any involuntary child custody proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court or State agency shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge or, where applicable, the administrator of the State agency, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13). The Secretary shall also pay the reasonable fees and expenses of qualified expert witnesses retained on behalf of an indigent parent or Indian custodian.

"(c) Each party in any child custody proceeding under State law involving an Indian child shall have the right to examine and copy all reports or other documents involving the child who is the subject of the proceeding. The State agency shall not be liable to a party for any harm resulting from its release of information to the tribe.

"(d) Any party seeking to effect a foster care, preadoptive or adoptive placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active, culturally appropriate efforts, including efforts to involve the Indian child's tribe, extended family and off-reservation Indian organizations, where applicable, have been made to provide remedial services and rehabilitative programs designed to prevent such placement or termination of parental rights and that these efforts have proved unsuccessful. Except for emergency placements pursuant to section 112 of this Act, in any case involving a non-tribal social services agency, no foster care, preadoptive or adoptive placement proceeding shall be commenced until the requirements of section 101(d) of this Act have been satisfied.

"(e) No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The clear and convincing evidence and qualified expert witnesses requirements shall apply to any and all findings which the court makes which are relevant to its determination as to the need for foster care, including the finding required by subsection (d) of this section.

"(f) No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The beyond a reasonable doubt and qualified expert witnesses requirements shall apply to any and all findings which the court makes which are relevant to its determination as to the need to terminate parental rights, including the finding required by subsection (d) of this section.

"(g) Evidence that only shows the existence of community or family poverty, crowded or inadequate housing, alcohol abuse, or non-conforming social behavior does not constitute clear and convincing evidence or evidence beyond a reasonable doubt that custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. To meet the burden of proof, the evidence must show the direct causal relationship between particular conditions and the serious emotional or physical damage to the child that is likely to result from the conduct of the parent or Indian custodian.

"(h) Any order for the foster care placement, termination of parental rights, preadoptive placement or adoptive placement shall protect the children's future opportunity to learn their tribal identity and heritage, and to take advantage of their tribe's cultural resources, including, to the extent possible and appropriate, provision for continued contacts between the children and their parents, family, and tribe.

"VOLUNTARY PROCEEDINGS

"SEC. 103. (a)(1) Where any parent or Indian custodian voluntarily consents to a foster care placement, termination of parental rights, or adoption under State law, such consent shall not be valid unless executed in writing and recorded before a judge of a court with jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent and the relevant provisions of this Act were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that the parent and Indian custodian, if any, fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after birth of the Indian child shall not be valid.

"(2) At least ten days prior to any State court proceeding to validate a voluntary consent where the State has jurisdiction to validate the consent, the court shall notify the Indian child's tribe, and the non-consenting parent, if any, by registered mail, return receipt requested, of the pending consent validation proceeding, of their right to intervention in the validation and any subsequent child custody proceeding, and of their right to petition or request the court to transfer the case to tribal court. A request for confidentiality shall not be reason to withhold notice from the tribe. The court shall also certify that active, culturally appropriate efforts, including efforts to involve the Indian child's tribe, extended family and off-reservation Indian organizations, where applicable have been offered remedial services and rehabilitative programs designed to prevent the break-up of the Indian family and that these efforts have proved unsuccessful.

"(3) Consent to a foster care placement, termination of parental rights, preadoptive placement or adoptive placement shall not be deemed abandonment of the child by the parent or Indian custodian. Such consent by a parent or Indian custodian shall not affect the rights of other Indian relatives to custody under tribal law or custom of this Act. Any voluntary consent pursuant to this section shall not be admissible as evidence in any proceeding under section 102 of this Act.

"(4) The Secretary of Health and Human Services shall take appropriate action to ensure that all Indian Health Service personnel are informed of and comply with the provisions of this section.

"(b) Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned immediately to the parent or Indian custodian unless returning the child to his or her parent or custodian would subject the child to a substantial and immediate danger of serious physical harm or threat of such harm by such parent or Indian custodian. The pendency of an involuntary child custody proceeding shall not be grounds to refuse to return the child to the parent or Indian custodian.

"(c) In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent or Indian custodian may be withdrawn for any reason at any time prior to the entry of a final decree of adoption, and the child shall be immediately returned to the parent or Indian custodian unless returning the child to his or her parent or Indian custodian would subject the child to a substantial and immediate danger of serious physical harm or threat of such harm by such parent or

Indian custodian. The pendency of an involuntary child custody proceeding shall not be grounds to refuse to return the child to the parent or Indian custodian.

"(d) After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding based upon a preponderance of the evidence that such consent was obtained through fraud or duress, the court shall vacate such decree of adoption and return the child to the parent. Unless otherwise permitted under State law, no adoption may be invalidated under the provisions of this subsection unless the parent or Indian custodian has petitioned the court within two years of the entry of the final decree of adoption.

"CHALLENGES BASED ON VIOLATIONS OF ACT

"SEC. 104. (a) In any child custody proceeding under State law, the Indian child, any parent, any Indian custodian from whose custody the child was removed, or the Indian child's tribe may (i) move to vacate or set aside any aspect of the proceeding which may have violated this Act, or (ii) bring an independent action to invalidate the proceeding in any court which has jurisdiction over the parties. Any member of the Indian child's family shall have the right to intervene in a proceeding pursuant to this section. In case of an alleged violation of section 105 of this Act, any member of the child's family shall have standing under this section to bring an independent action to challenge the placement.

"(b) Notwithstanding any law to the contrary, Federal courts shall have jurisdiction to review any final decree of a State court which is alleged to be in violation of this Act, upon a petition for writ of habeas corpus brought under section 2254 of title 28, United States Code or an independent action brought by any party withstanding to pursue such an action pursuant to section (a).

"(c) The court shall, upon requst, hear any motion or action brought under this section or any appeal from a decision in a child custody proceeding on an expedited basis.

"PLACEMENT GOALS IN STATE COURT PROCEEDINGS

"SEC. 105. (a) All placements of Indian children shall seek to protect the right of Indian children as Indians and the rights of the Indian community and tribe in having its children in its society.

"(b) Any adoptive placement of an Indian child under State law shall be made in accordance with the order of placement established by the child's tribe by resolution, or in the absence of such resolution, with the following order of placement: (1) a member of the child's family; (2) other members of the Indian child's tribe; or (3) other Indian families, except as provided in subsections (d) and (e).

"(c) Any child accepted for foster care or preadoptive placement shall be placed (1) in the least restrictive setting which most approximates a family and (2) within reasonable proximity to his or her home. Except as provided in subsections (d) and (e) below, any foster care or preadoptive placement shall be made in accordance with the following order of placement unless the child's tribe has established a different order of placement by resolution:

"(i) a member of the Indian child's family;

"(ii) a foster home licensed, approved, or specified by the Indian child's tribe;

"(iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

"(iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

"(d) Any placement established under subsection (b) or (c) of this section may be varied, so long as it remains consistent with subsection (a) of this section, where (1) the child is at least age twelve and of sufficient maturity and requests a different placement; or (2) the child has extraordinary physical or emotional needs, as established by the testimony of expert witnesses, that cannot be met through a placement within the order of placement, or (3) families within such order of placement are unavailable after diligent search has been completed, as provided for in subsections (f) and (g), for a family within the order of placement.

"(e) A placement preference expressed by the Indian child's parent or Indian custodian, or a request that the consenting parent's identity remain confidential, shall be considered so long as the placement is made with one of the persons or institutions listed in subsections (b) or (c), or one of the exceptions contained in subsection (d) applies. A request for confidentiality shall not be grounds for withholding notice from the Indian child's tribe, provided that notice of the proceeding shall include a reference to the request.

"(f) Notwithstanding any State law to the contrary, the standards to be applied in meeting the placement requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or family resides or with which the parent or family members maintain social and cultural ties. If necessary to comply with this section, a State shall promulgate, in consultation with the affected tribes, separate State licensing standards for foster homes servicing Indian children and shall place Indian children in homes licensed or approved by the Indian child's tribe or an Indian organization.

"(g) A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of placement specified in this section. Such efforts must include, at a minimum, contacting the tribe prior to placement to determine if it can identify placements with the order of placement, notice to all family members that can be located through reasonable inquiry of the parent, custodian, child and Indian child's tribe, a search of all county or State listings of available Indian homes and contact with local Indian organizations, the Department of Interior's Bureau of Indian Affairs and nationally known Indian programs with available placement resources. The record of the State's compliance efforts shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

"SUBSEQUENT PLACEMENTS OR PROCEEDINGS

"SEC. 106. (a) Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parent's parental rights to the child have been terminated, the public or private agency or individual seeking to place the child, in accordance with the provisions of section 102(a), shall notify the biological parents, prior Indian custodians and the Indian child's tribe of the pending placement proceedings, their right of intervention, and their right to petition for return of custody. The court shall grant the petition for return of custody of the parent or Indian custodian, as the case may be, unless there is a showing, in a proceeding subject to subsections (e) and (f) of Section 102 of this Act, that such return of custody is not in the best interests of the child. Whenever an Indian child who has been adopted is later placed in foster care, the Indian child's tribe shall be notified and have the right to intervene in the proceeding.

"(b) In the event that the court finds that the child should not be returned to the biological parents or prior Indian custodian, placement shall be made in accordance with the order of placement in section 105. For the purposes of this section family shall include the family of the biological parents or prior Indian custodian.

"(c) Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, or when review of any such placement is scheduled, such placement shall be in accordance with the provisions of this Act, including prior notice to the child's biological parents and prior Indian custodian, and the Indian child's tribe, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

"TRIBAL AND FAMILY AFFILIATION; DISCLOSURE BY COURT

"SEC. 107. An adopted Indian individual who has reached the age of eighteen, the Indian child's tribe or the Indian child's adoptive parents, may apply to the court which entered the final decree of adoption for the release of information regarding the individual's biological parents and family and their tribal affiliation, if any. Based upon court records or records subject to court order, the court shall inform the individual of the names and tribal affiliation of his or her biological parents. The court shall also provide any other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

"REASSUMPTION OF EXCLUSIVE TRIBAL JURISDICTION

"SEC. 108. (a) Any Indian tribe which became subject to State concurrent jurisdiction over voluntary child custody proceedings pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume exclusive jurisdiction over all voluntary child custody proceedings. Before any Indian tribe may reassume jurisdiction over voluntary Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

"(b)(1) In considering the petition and feasibility of the plan of a tribe under subsection (a), the Secretary may consider among other things:

"(i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;

"(ii) the size of the reservation or former reservation area which will be affected by retrocession or reassumption of jurisdiction by the tribe;

"(iii) the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and

"(iv) the feasibility of the plan in cases of multitribal occupation of a single reservation or geographic area.

"(2) In those cases where the Secretary determines that full jurisdiction is not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise exclusive jurisdiction over voluntary placements in limited community or geographic areas without regard for the reservation status of the area affected.

"(c) If the Secretary approves any petition under subsection (a), the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. If the Secretary disapproves any petition under subsection (a), the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval. The Indian tribe concerned shall reassume exclusive jurisdiction over all voluntary placements of all Indian children residing or domiciled on the reservation sixty days after publication in the Federal Register of notice of approval.

"(d) Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 109 of this Act or as otherwise provided in the notice of the Secretary.

"AGREEMENTS BETWEEN STATES AND INDIAN TRIBES

"SEC. 109. (a) States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes. Nothing in this section or in section 108 of this Act shall be construed as in any way diminishing or altering the inherent powers of Indian tribes over children's proceedings.

"(b) Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

"IMPROPER REMOVAL OF CHILD FROM CUSTODY

"SEC. 110. (a) Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forth-with return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

"(b) In any instance where a child has been improperly removed or retained by an individual or entity, the parent or Indian custodian from whose custody the child was removed and the child's tribe may petition any court with jurisdiction for return of the child in accordance with this section.

"HIGHER STATE OR FEDERAL STANDARDS TO APPLY

"SEC. 111. (a) An Indian parent or custodian may not waive any of the provisions of this Act.

"(b) In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child then the rights provided under this title, the State or Federal court shall apply the State or Federal standard.

"EMERGENCY REMOVAL AND PLACEMENT OF CHILD

"SEC. 112. (a) Regardless of whether a child is subject to the exclusive jurisdiction of an Indian tribe, when a child is located off the tribe's reservation nothing in this title shall be construed to prevent the emergency removal of an Indian child from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child. Wherever possible, the child shall be placed within the order of placement provided for in section 105 of this Act.

"(b) No later than the time permitted by State law, and in no event later than three days (excluding Saturday, Sunday and legal holidays) following the emergency removal, the State authority, agency or official must obtain a court order authorizing continued emergency physical custody. If the Indian child has not been restored to its parent or Indian custodian with ten days following the emergency removal, the State authority, agency or official, shall—

"(1) commence a State court proceeding for foster care placement if the child is not resident or domiciled on an Indian reservation and is not a ward of the tribal court, or

"(2) transfer the child to the jurisdiction of the appropriate Indian tribe if the child is resident or domiciled on an Indian reservation or ward of the tribal court.

Notwithstanding the filing of a petition for a foster care placement of the child, the State agency, authority or official shall continue active efforts to prevent the continued out-of-home placement of the child. No emergency custody order shall remain in force or in effect for more than thirty days without determination by the appropriate court, in accordance with section 102(e) of this Act in the case of a State court, that foster care placement of the child is appropriate: *Provided*, That in any case where the time requirements in section 102(a) do not permit a child custody proceeding to be held within thirty days, the emergency custody order may remain in force for a period not to exceed three days after the first possible date on which the proceeding may be held pursuant to section 102(a).

"(c) Emergency removal under this section shall not impair the exclusive jurisdiction of the tribe.

"EFFECTIVE DATE

"SEC. 113. None of the provisions of this title, except section 101(a), 108, and 109, shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after the enactment of this Act, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

"INDIAN CHILD WELFARE COMMITTEES

"SEC. 114. The Secretary shall establish Indian Child Welfare committees consisting of not less than three persons for each area office. The committees shall monitor compliance with this Act on an on-going basis. Appointments to the committees shall be made for a period of three years and shall be chosen from a list of nominees furnished, from time to time, by Indian tribes and organizations. Each committee shall be broadly representative of the diverse tribes located in its area.

"COMPLIANCE BY PRIVATE CHILD PLACEMENT AGENCIES

"SEC. 115. In licensing any private child placement agency, any State in which either (1) a federally-recognized Indian tribe is located or (2) there is an Indian population of more than 10,000, shall include compliance with this Act by the private agency as a condition of continued licensure and shall annually audit such agencies to ensure that they are in compliance. The audit report shall be made available upon the request of the Secretary or any tribe.

"ABORIGINAL PEOPLES OF CANADA

"SEC. 116. (a) Except as provided by this section, the provisions of sections 101(c), 102, 103, 104, 105, 106, 107, 110, 111, and 112 of this Act shall also apply to the aboriginal peoples of Canada and their children.

"(b) The 'Indian child's tribe,' in the case of aboriginal peoples of Canada, shall be the child's Indian Act band or, if neither the child nor its parents are members of any band, the aboriginal government or most appropriate regional aboriginal organization with which the child's parents are connected by their origins or residence.

"(c) Indian Act bands, other aboriginal governments, and regional aboriginal organizations may by resolution designate aboriginal organizations in Canada, or Indian tribes or Indian organizations in the United States, as agents for the purposes of this Act. Resolutions to this effect shall be delivered to, and promptly acknowledged by the Secretary, who shall publish a list of such designations annually in the Federal Register.

"(d) For the purposes of section 102(a) of this Act, notice shall also be given to the Minister of the Government of Canada who is responsible for Indians and lands reserved for Indians.

"(e) In any State court child custody proceeding involving an aboriginal Canadian child, the court shall permit the removal of such case to the aboriginal, provincial, or territorial court in Canada which exercises primary jurisdiction over the territory of the child's tribe, upon a petition, and absent unrevoked parental objections, as is provided for in other cases by section 101(b) of this Act.

"TITLE II—INDIAN CHILD AND FAMILY PROGRAMS

"GRANTS FOR PREVENTIVE PROGRAMS ON OR NEAR RESERVATIONS

"SEC. 201. (a) The Secretary shall make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs, in accordance with priorities established by the tribe, may include, but are not limited to—

"(1) a system for licensing or otherwise regulating Indian foster and adoptive homes;

"(2) the operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children;

"(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, cultural and family-enriching activities and respite care;

"(4) home improvement programs;

"(5) the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;

"(6) education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs;

"(7) a subsidy program under which Indian adoptive child may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and

"(8) guidance, legal representation, and advice to Indian families and tribes involved in tribal, State, or Federal child custody proceedings.

"(b) Funds appropriated for use by the Secretary in accordance with this section may be utilized as non-Federal matching share in connection with funds provided under titles IV-B and XX of the Social Security Act or under any other Federal financial assistance programs which contribute to the purpose for which such funds are authorized to be appropriated for use under this Act. The provision or possibility of assistance under this Act shall not be a basis for the denial or reduction of any assistance otherwise authorized under titles IV-B and XX of the Social Security Act of any other federally assisted program. Placement in foster or adoptive homes or institutions licensed or approved by an Indian tribe, whether the homes are located on or off the reservation, shall qualify for assistance under federally assisted programs, including the foster care and adoption assistance program provided in title IV–E of the Social Security Act (42 U.S.C. 670 et seq.).

"(c) In lieu of the requirements of subsections 10, 14 and 16 of section 471 of the Social Security Act (42 U.S.C. 671 (10), (14) and (16)), Indian tribes may develop their own systems for foster care licensing, development of case plans and case plan reviews consistent with tribal standards.

"GRANTS FOR OFF-RESERVATION PROGRAMS

"SEC. 202. The Secretary shall also make grants to Indian organizations to establish and operate off-reservation Indian child and family service programs which, in accordance with priorities set by the Indian organizations may include, but are not limited to—

"(1) a system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate State standards of support for maintenance and medical needs;

"(2) the operation and maintenance of facilities and services for counseling and treatment of Indian families and Indian foster and adoptive children;

"(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care; and

"(4) guidance, legal representation, and advice to Indian families involved in child custody proceedings.

"FUNDS FOR IMPLEMENTATION OF ACT

"SEC. 203. (a) In the establishment, operation, and funding of Indian child and family service programs, both on and off reservation, the Secretary shall enter into agreements with the Secretary of Health and Human Services, and the latter Secretary is hereby authorized and directed to use funds appropriated for similar programs of the Department of Health and Human Services for such purpose.

"(b) Funds for the purposes of this Act may be appropriated pursuant to the provisions of the Act of November 2, 1921 (42 Stat. 208), as amended. In addition, Congress may appropriate such sums as may be necessary to provide Indian child welfare training to Federal, State and Tribal judges, court personnel, social workers and child welfare workers, including those employed by agencies licensed by a State.

"(c) Indirect and administrative costs relating to a grant awarded pursuant to this title shall be paid out of Indian Contract Support funds. One hundred per centum of the sums appropriated by Congress to carry out the provisions and purposes of this Act shall be awarded to tribes or Indian organizations.

" 'INDIAN' DEFINED FOR CERTAIN PURPOSES

"SEC. 204. For the purposes of section 202 and 203 of this title, the term 'Indian' shall include persons defined in section 4(c) of this Indian Health Care Improvement Act of 1976 (90 Stat. 1400, 1402).

"TITLE III—RECORDKEEPING, INFORMATION AVAILABILITY, AND TIMETABLES

"STATE REPORTS

"SEC. 301. (a) Any State court entering a final decree or order in any Indian child adoptive placement after the date of enactment of this Act shall provide the Secretary and the Indian child's tribe with a copy of such decree or order together with such other information as may be necessary to show—

"(1) the name and tribal affiliation of the child;

"(2) the names and addresses of the biological parents;

"(3) the names and addresses of the adoptive parents; and

"(4) the identify of any agency having files or information relating to such adoptive placement.

"No later the one hundred and twenty days after enactment of this bill, the administrative body for each State court system shall designate an individual or individuals who will be responsible for ensuring State court compliance with this Act. All information required by this subsection relating to decrees of adoption entered after May 8, 1979, shall be compiled and forwarded to the Secretary and Indian child's tribe no later than January 1, 1989. Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall be not subject to the Freedom of Information Act (5 U.S.C. 552), as amended.

"(b) Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or any Indian tribe, the Secretary shall disclose such information as may be held by the Secretary pursuant to subsection (a) of this section. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting that their identity remain confidential and the affidavit has not been revoked, the Secretary shall provide to the Indian child's tribe, where the such information about the child's parentage and other circumstances of birth as required by such tribe to determine the child's eligibility for membership under the criteria established by such tribe.

"(c) No later than February 15 of each year, the Secretary shall obtain from each State a list of all Indian children in foster care, preadoptive or adoptive placement as of December 31 of the previous year. The list shall include the name of the Indian child's tribe, the name and address, if known, of the child's biological parents and prior Indian custodian, if any, the names and addresses of the parties having legal and/or physical custody of the child and the current legal status of the child, biological parents and prior Indian custodian. Within ten days of the submission of the list to the Secretary, the State shall provide to each tribe all information on the list pertaining to the children of such tribe.

"RULES AND REGULATIONS

"SEC. 302. Within one hundred and eighty days after the enactment of this Act, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this Act. In promulgating such rules and regulations, the Secretary shall consult with national and regional Indian organizations and with Indian tribes.".

SEC. 3. CONFORMING AMENDMENTS TO RELATED ACTS.

(a) Section 408(a) of title IV of the Social Security Act (42 U.S.C. 608(a)) is amended—

(1) by striking out at the end of subsection (2)(A) the word "or"

(2) by adding after subsection (2)(B) the following clause "or (C) in the case of an Indian child, as defined

by subsection 4(4) of the Indian Child Welfare Act (25 U.S.C. 1903(4)), the Indian child's tribe as defined in subsections 4(5) and (8) of that Act (25 U.S.C. 1903 (5) and (8)),".

(b) Section 422 of Title IV of the Social Security Act (42 U.S.C. 622) is amended by adding after and below clause (8) the following new clause:

"(9) include a comprehensive plan, developed in consultation with all tribes within the State and in-State Indian organizations (with social services programs), as defined by section 4(7) of the Indian Child Welfare Act (25 U.S.C. 1903(7)), to ensure that the State fully complies with the provisions of the Indian Child Welfare Act."

(c) Section 471 of title IV of the Social Security Act (42 U.S.C. 671) is amended by adding after and below clause (17) the following new clause:

"(18) provides for a comprehensive plan, developed in consultation with all tribes within the State and in-State Indian organizations (with social service programs), as defined by section 4(7) of the Indian Welfare Act (25 U.S.C. 1903(7)), to ensure full compliance with the provisions of the Indian Child Welfare Act. As part of the plan, the State shall make active efforts to recruit and license Indian foster homes and, in accordance with section 201 of the Indian Child Welfare Act (25 U.S.C. 1931), and provide for the placement of and reimbursement for Indian children in tribally licensed or approved facilities."

SEC. 4. EFFECTIVE DATE.

The amendments made by this Act shall take effect ninety days after enactment.

SEC. 5. NOTICE.

Within forty-five days after enactment of these amendments, the Secretary shall send to the Governor, chief justice of the highest court of appeal, the attorney general, and the director of the Social Service agency of each State and tribe a copy of these amendments, together with committee reports and an explanation of the amendments.

SEC. 6. SEVERABILITY.

If any of these amendments or the applicability thereof is held invalid, the remaining provisions of this Act shall not be affected thereby.

○

The **Chairman**. Our first witness this morning is the Honorable Ross Swimmer, the Assistant Secretary for Indian Affairs of the Department of the Interior.

STATEMENT OF HON. ROSS SWIMMER, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. **Swimmer**. Thank you, Mr. Chairman.

I appreciate the opportunity to appear today, and I appreciate the committee's and especially the chairman's concern about Indian affairs and the issues in Indian country.

I do have a statement which I will submit for the record. In lieu of summarizing the statement, however, and getting directly to questions, I would like to present to the committee a letter from the Secretary of the Interior that was given to me just this morning to read to the committee and to the witnesses here, and I think it expresses the concern of the Administration and the views. Perhaps after that, we can get into the questions and answers.

The letter is addressed to the Honorable Daniel K. Inouye:

Dear Mr. Chairman: I am extremely alarmed over the provisions of S. 1976, a bill to amend the Indian Child Welfare Act. My concerns are such that I have asked Assistant Secretary Swimmer to request permission of the chairman to incorporate this letter in the record when he testifies on the bill.

The three branches of the Government of the United States frequently are called upon to deal with the complex issues which arise when Indian tribes, States, and the Federal Government each seek to exercise sovereignty over matters of persons of interest to them. The reasonable balancing of interests between such entities, always bearing in mind what is in the best interests of the Indians as individual human beings, is not always easy.

I believe strongly that it is clear that this bill fails the test of reasonable balance. It would skew the balance in a manner which is wholly unacceptable to the Department of the Interior and should be unacceptable to any persons who are concerned about human rights issues, especially including the human rights of children.

Although there are multiple flaws in the bill, we call your attention to three fundamental objections:

First, the bill is anathema to the salutary constitutional principle that legislation cannot stand if it makes classifications and distinctions based on race. If enacted, this bill would subject certain Indian children to the claim of jurisdiction of an Indian tribe solely by reason of the children's race. For example, under section 101(b) of the bill, if a tribe seeks transfer of a child custody or adoption case from State court to the tribe, the parents' objection to such transfer will be unavailing unless the objection is "determined to be consistent with the best interests of the child as an Indian." The provision ignores all other aspects of the child's status as a human being. That, in my view, is pure racism.

The Fourteenth Amendment to the Constitution was adopted to protect the rights of the individual against classifications based on the individual's race. This bill cannot be reconciled with that guiding principle. It is not enough to say but this is Indian legislation. Indians are, and certainly should be, entitled to the basic protections of the Constitution even when those protections would be denied by Indian legislation.

Second, the bill is contrary to what I believe is sound prevailing public policy in this country. In adoption and child custody cases, it is the interests of the child which are of paramount importance. This bill subordinates the best interests of the child to that of the tribe. While we all can agree that a child's knowledge of an exposure to his or her cultural heritage can be a vital and valuable aspect of the child's personality and value system, it is wrong to elevate that concept to a point where it overrides virtually every other concern bearing on the fundamental wellbeing of the child.

Third, at least the current act limits the jurisdictional claim of the tribe to children of tribal members. Such membership typically is obtained by voluntary enrollment or at least can be terminated by the Indian's voluntary act, thereby creating a

> situation where the tribal member arguably may be said to have consented to application of tribal law.
>
> This bill, however, extends the jurisdictional reach of the tribe to children whose parents need not be tribal members. Indeed, the parents and other ancestors of the child may have had no connection with the tribe perhaps for years or even generations.
>
> In such circumstances, it seems to me that the State in which the parents and child are domiciled does have a proper and overriding interest to see to it that its processes, not those of the tribe, are invoked to assure that the child custody or adoption proceeding will result in protecting the best interests of the child.
>
> The bill does substantial violence to important constitutional principles and to sound public policy. Mr. Chairman, you may wish to inquire of Assistant Secretary Swimmer about the accusations frequently leveled against the United States for its treatment of Indians when the issue of human rights within the Soviet Union arises. Enactment of this bill in the name of Indian legislation simply will provide significant fuel to that fire. The bill should not be enacted.

Mr. Chairman, I share the concerns of the Secretary. I think that the bill strikes a racist type policy that this committee would not want part of. I believe that it is wrong that we extend jurisdiction, especially in those cases where an individual may, through happenstance, be eligible for membership in a tribe but have never had anything to do with that tribe and yet be forced onto that reservation.

I can think of numerous examples which I won't go into, but there are obvious ones involving tri-racial marriages, inter-racial marriages where an individual, by reason of Indian descent who may have features very distinctively not Indian could be forced to be placed in an Indian reservation environment where discrimination would surely affect their progress and development.

I don't believe that this bill should be made law. I believe that the work that is being done now under the Indian Child Welfare Act that was passed is progressing. We are making changes, and things are improving in Indian country.

We believe there are some changes that could be made in the act. We would like to have time to submit those to the committee for its consideration.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Swimmer appears in appendix.]

[Letter from Secretary Hodel appears in appendix.]

The CHAIRMAN. I thank you very much, Mr. Secretary.

I must say that I am a bit surprised with the tone and tenor of the letter and your prepared remarks, but if you really believe in what you have said, I would like to note that a recently completed study jointly commissioned by your Bureau of Indian Affairs and the Administration for Children, Youth, and Families in HHS stated the following:

> In combination, the Indian Child Welfare Act and the Adoption Assistance and Child Welfare Act provide a number of safeguards and procedures to ensure that Indian children are not separated from their families and the jurisdiction of their tribes unnecessarily and that they receive child welfare services focused on achieving permanency.

I would also note that your own budget submission for fiscal year 1989 refers to the grant program authorized under Title II as follows:

> These grants are designed to maintain the integrity of Indian family life and thus avoid the unwarranted placement for adoption or foster care of Indian children.

What do you have to say about that?

Mr. SWIMMER. I fully support those principles and those objectives that are included that you just read. I think it is important that on Indian reservations where an Indian family is having trouble that may in fact lead to the removal of an Indian child from that family that we should use all of our efforts to seek, in the best interests of the child, a placement that is going to be satisfactory to that child and that in 99 times out of 100 or maybe 100 out of 100 it is going to be with an Indian family as available on the reservation where that child is now living.

This bill, though, doesn't do that. This proposed bill, these amendments, go way beyond that. That is our primary objection. It——

The CHAIRMAN. How does it go way beyond that?

Mr. SWIMMER. For instance, in my own tribe, a Cherokee family in California, an Indian and a non-Indian, an Indian father and non-Indian mother decide that they reach the point where they are unable to care for the child and the State claims that there has been neglect of the child. That child and these people have never been to the Cherokee Nation in their lives. They don't even know it exists. Yet, they are eligible for membership in the Cherokee Nation. That child would go under the jurisdiction of the Cherokee Tribe either in Oklahoma or North Carolina.

I think that is far too reaching. It then takes away the opportunity for the State courts to have anything to say about that.

That is extreme example. Another example which may be extreme or may not be is I think the case exists of an inter-racial marriage of black and Indian where the child has predominantly black features. He would be sent to a reservation although neither parent had ever been close to a reservation in their lives.

We are subjecting Indian children who may have no interest nor their parents ever have any interest in being Indian or being on or near a reservation of being sent to a reservation or sent to an Indian environment in which they did not grow up and do not want their children raised in.

It also takes away a lot of the opportunity that the courts are already infringing on of the voluntary-ness of an adoption or placement, saying that, in effect, the natural mother is not capable of determining what the best interests of the child are.

The bill tends to subject the interests of the child to the interests of the tribe. My only concern in this whole legislation—and I think that the legislation can be summed up in one phrase, and that is that it is incumbent upon the United States of America to see that the best interests of the Indian child is protected, period.

If we all reached for that goal, we would be able to accomplish what we are trying to do today under the original Indian Child Welfare Act without going into the illogical extensions of these proposed amendments under the new act. The new act very much makes it a racist type situation. It even suggests that one tribe should have the authority over another tribe's member.

We know within Indian tribes that it may be very detrimental—there are racist examples between Indian tribes—that it may be very detrimental to take one member of a tribe and place that member with another tribe rather that with, say, a non-Indian family, because you have a situation where that kind of tension exists between the two tribes, and a child growing up in a foreign environment of another tribe's people could be very detrimental.

These amendments are just beyond everything that makes sense, in our opinion, at least, and in my opinion as far as trying to protect the best interests of the Indian child, and that is what we are all about.

The CHAIRMAN. But isn't it true that the tribal court cannot invoke its jurisdiction outside the boundaries of the reservation?

Mr. SWIMMER. As I understand it, the implication of the law is that a child outside the immediate jurisdiction of the tribe can be brought into the jurisdiction of the tribe, that the tribe can reach out for those children.

The CHAIRMAN. That is not our interpretation.

Mr. SWIMMER. Well, maybe we can make that clear that as long as that child is not under the jurisdiction of the tribe that they are not subject to the jurisdiction of the tribe.

Under the current act, children in my tribe who are out of State, out of Oklahoma and away from the tribe's jurisdiction but who are members of the tribe are brought under the jurisdiction of that act, of the existing act. They must report and notify the tribe, even if it is a Cherokee in California. They must advise the tribe that this child is being adjudicated one way or the other, and the tribe has the option of intervening.

We have seen this situation recently that got headlines from the Navajo Tribe exercising its jurisdiction in California to bring a child home that had been adopted there through a voluntary adoption by its natural mother. We have seen case after case of this happening under the current law.

So, I don't know. It is my opinion that the amendments even go further than the current law does, and I know the current law requires notice of the member's tribe, regardless of where that person lives.

The CHAIRMAN. But in the case of the Navajo, didn't the Navajo court give jurisdiction and award custody of the child to the non-Indian adoptive petitioners?

Mr. SWIMMER. I think ultimately they did. I am not sure if the outcome has been determined. I think, as I recall reading the case, it was an open—it would be classified as an open adoption, however, with visitation rights of the——

The CHAIRMAN. By your statement, one would assume that the Indians just grabbed hold of the child because the child was Indian. In both cases which were highly publicized, the child was awarded to the non-Indian adoptive parents.

Mr. SWIMMER. I think in one case, they were not allowed to adopt but only to have custody. In the recent case, I believe they are being permitted the right to adopt under an open adoption.

The CHAIRMAN. The only thing that they gave the biological parents was visitation rights.

Mr. SWIMMER. Well, that is true, and in this case, it might be appropriate. In other cases, it might not be, and I don't think that the requirement of having all open adoptions is necessarily good.

The CHAIRMAN. They can always object to the transfer, can't they, the parents? Under the law?

Mr. **Swimmer**. The right of the tribal court prevails over the right of the natural parent.

The **Chairman**. But not in the case where the State has invoked jurisdiction.

Mr. **Swimmer**. Well, the State is not going to be able to invoke jurisdiction if the tribal court takes jurisdiction of the case. If the State takes jurisdiction of the case, it has to decide the case along the lines of the Child Welfare Act.

The **Chairman**. I have been advised that the tribe can request jurisdiction but either parent can object. Isn't that correct?

Mr. **Swimmer**. That the tribe can request jurisdiction but the parents can object?

The **Chairman**. Yes.

Mr. **Swimmer**. It is my understanding that is possible but that the tribe would survive. The tribe's request for jurisdiction over the child is predominant and would dominate.

I will check that out with our legal people as far as that is concerned, but if that is an issue that can be resolved, that would be helpful to be sure that the natural parent has the right to object to tribal jurisdiction. If we can write that into the act, it will go a long way, at least in that provision.

There are other provisions in the act that are, I think, just as onerous. One of them is the removal of alcohol abuse and nonconforming social behavior as a reason to remove a child from a home.

I don't know what the intent of that is, but I am afraid that being in a home with an alcoholic situation that would result in a case worker recommending removal of the child and saying that can't be used as an excuse would be extremely harmful to an unprotected infant.

We see cases on a regular basis of child abuse in Indian country, and particularly those of alcoholic families. I don't think we can justify it and simply say because alcohol in certain cases is prevalent in an area that that should be removed as an excuse.

But that is just one of our objections. As I said, Mr. Chairman, I don't want to take the time of the committee. I would be happy to give you example after example of how we believe this bill can be very detrimental to the best interests of Indian children, and that is our objective here.

I have no reason to oppose any effort by this committee or this Congress or this administration to seek the best interests of the Indian children. However, I do object when it gets into this idea of creating a bureaucracy of lawyers, consultants, social workers, proposal writers, and everybody else spending money on everything but what appears to be the best interests of the Indian children. I think that is the way we are going.

I think we need to address what is going on on the reservation. We need more social workers out there. We project the possible cost just of the amendments is going to be $7 or $8 million. I would take that money and add social providers out there and people who could work directly with families, who could help remove some of the problems that we see out there on a regular basis with families.

We don't need to put people into courts, and we don't need to put lawyers arguing over who has custody of this or that. We need to put people out there on the reservation where they can be working directly with families trying to build and construct a family structure on that reservation that is now in danger of being lost totally because of alcoholism and——

The CHAIRMAN. If that is the case, why doesn't the BIA recommend additional funds for just what you have described?

Mr. SWIMMER. The problem that we have in the budget generally is what I described before, Mr. Chairman. It is difficult for us to say that on top of the $1 billion that we have, we can justifiably come up here and say, well, but we are not getting this problem done and we need some more when I cannot justify to the committee that the $1 billion we spend is being spent well.

Yet, if I make a proposal that some of the things that we think would be much lower priority should be changed to put money into Indian child welfare, we immediately, of course, are chastised by the Indian community and the special interests that have that pot of money.

I think we do have to reach the point, though, where we begin prioritizing where our money goes, because there is not an unlimited supply. We see this in our school systems where we are spending an average of $8200 per student. Yet, we are not getting the quality education.

Yet, when we go out and talk about changing the structure of education, we see that it is basically an employment program. We don't get support on it. We say, well, where are those people going to work if we hire teachers instead of teacher aides.

It is a complex. Oftentimes, we find that putting more money in on top of money that is being spent poorly isn't going to help the situation, and part of that is what we have here.

I think we need to redirect some of the funding that we do in the child welfare area. We are spending money now. These grants that we give out, the $7.5 million that we give now, are given out competitively based on who can write the best proposal and who can include all of the right words in that proposal. Oftentimes, that money goes off reservation to urban Indian groups serving children who are not even on the reservation or affected by the reservation.

Yet, we see tribes coming to me regularly appealing this, because they say we are not getting the money out here on the reservation.

The CHAIRMAN. Who is making the grants now, your office?

Mr. SWIMMER. The Bureau of Indian Affairs makes the grants.

The CHAIRMAN. Aren't you supposed to see if these applications are proper?

Mr. SWIMMER. We check them with a fine toothed comb. We go over them and we give as much weight as we can to the tribe, and sometimes they just don't have as good a proposal writer.

Congress has mandated that these be competitive, that we put these out as competitive, not where the need is, but where the competition is best, who can write the best proposal. That is who gets the money.

The CHAIRMAN. Well, you can assist them to write good grant applications.

Mr. SWIMMER. We do that. We even give them help with the deadlines and the time lines, and oftentimes, we will get a late application by two or three days. Yet, everyone else has theirs in on time. But we do provide that up front assistance, Mr. Chairman, to the extent that we can, and we can't write the proposal for them, because they have to be able to write the objectives that they are trying to accomplish and compete on that basis with everyone else who is trying for a Child Welfare Act proposal.

The CHAIRMAN. Am I correct to conclude from your statement that you have a concern that the child's best interest may not be well served in a tribal court?

Mr. SWIMMER. Not across the board. Many tribal courts have yet to be able to establish rules of procedure, of conduct, and this isn't across the board. It may be in the neighborhood of 50/50 or maybe less than that. But where you have tribal courts that aren't adequate yet and where we are still trying to build on that and add to tribal courts and provide training and what have you there, but where we don't have it yet, yes, there are serious problems with subjecting a child to——

The CHAIRMAN. Do you mean 50 percent of the Indian courts are not wise enough to rule upon something like this?

Mr. SWIMMER. Some tribes don't even have them, Mr. Chairman. Some tribes don't have tribal courts. In those cases, of course, the kids generally do—the tribe defers to the State process.

But then you have tribes that are attempting to bring tribal courts up on the reservation and they are not there yet, and, yes, there are problems with those kinds of courts that haven't been fully established yet, and they don't have the rules operating.

The CHAIRMAN. How long has it taken for the Indians to establish their courts?

Mr. SWIMMER. Different tribes have been going at different times. In some cases, tribes just recently obtained the right to a tribal court. They have just retroceded jurisdiction or they have just had a law passed that gives them certain jurisdiction, and they have established a tribal court.

It is an on-going thing. It is dynamic. Some tribes will have tribal courts, and some tribes decide they won't and they will go back under State jurisdiction.

The CHAIRMAN. Is there any responsibility on the part of the Government of the United States to assist these people to establish tribal courts?

Mr. SWIMMER. Yes; there is, and we are doing that. In fact, one of our——

The CHAIRMAN. Have you been able to identify those courts that you claim do not provide proper service?

Mr. SWIMMER. I think we could give you a list of those that are not up to a standard.

The CHAIRMAN. And what have we done about them?

Mr. SWIMMER. We continue to work with the people on the reservation in those tribal courts. This very year, we have proposed in our budget a tribal court training program where we can bring people into a training situation and help the tribes establish the rules of procedure, train judges, set up court rules and what have you so that they can operate tribal courts.

I believe that is essential to justice on the reservation.

The **CHAIRMAN**. Isn't it correct that up until now the BIA has done almost nothing to train these people, that they have trained themselves?

Mr. **SWIMMER**. Oh, I don't think so, not at all, Mr. Chairman. We have put money—again, that would say that the money that we have spent has all been wasted. We have put money in our budget regularly. We have tribal judges training provided. We have had many different ways of working with tribes to establish their courts and we continue working on that.

The **CHAIRMAN**. I would like to get a report from you as to the extent we have assisted these courts.

Mr. **SWIMMER**. Sure.

[Information to be supplied follows:]

In 1987 and 1988 the Bureau provided the following training sessions for tribal court personnel.

Court personnel serviced

	Percent
Regular training sessions—seven	401
On-site training sessions:	
Pine Ridge	16
Seneca	30
Alcohol and drug training, Public Law 99-570:	
Two alcohol and drug	120
Two juvenile code	86
Northwest Tribes	35
Montana and Wyoming Tribes	(1)
Child abuse and neglect training (Provided for and funded by Division of Social Services)—Nine: Percent of multiagency personnel serviced	510

[1] Figures pending.

During FY 1987 the following activities were accomplished:

8 Tribal Liquor Ordinances were processed through the office and published in the Federal Register;

3 Tribal Liquor Ordinances were processed and are pending further action by the Solicitor's Office;

2 Court Reviews were conducted;

28 "Needy Tribal Courts" were funded;

12 Area Offices were funded to provided Child Protection Team Training, most to be accomplished in FY 1988. Division worked with multi Bureau agencies to develop minimum guidelines for developing Child Protection Teams at Area and Agency levels;

Model Juvenile Code was developed;

Funding was provided for Acoma, Canoncito, Laguna Model Juvenile Alcohol and Drug Abuse Facility; and

Funding guidelines were developed for expenditure of "Needy Tribal Court" funds.

During the FY 1988, the following number of training sessions were conducted:

Court personnel serviced

	Percent
Regular training sessions:	
Eight	446
One training course remains in FY 1988 which will service approximately 60 trainees (projected)	60
On-site training sessions: Oklahoma City University CFR judges	(1)
Alcohol and Drug Training, Public Law 99-570:	
Two alcohol and drug (scheduled for July/August 1988) (projected)	120
Five training sessions at five Bureau Area office locations	(1)

[1] Figures pending.

During 1988, the following activities were accomplished:

In addition to these training cycles, other innovate approaches have been taken to disseminate court related information. In January 1988, a conference was organized in Washington, D.C. on "The Future of Tribal Courts".

A one day mini conference for tribal judges was held in Albuquerque, New Mexico in April 1988. The following four regional tribal judges organizations were in attendance to address tribal court concerns: Northern Plains Tribal Judges Association; Southwest Indian Judges Court Association; Northwest Judges Association; Great Lakes Tribal Judges Association. It should be noted that three of the four tribal judges association supported the need of expanding the Bureau's court related services through the development of a Judicial Services Center to be established in the field.

Under contract, a Model Juvenile Code and a Model Child Protection Code are being developed for dissemination to the tribal court systems.

Under contract, the Bureau provides the Indian Law Report to all the tribal court systems.

35 "Needy Tribal Courts" were funded.

4 Tribal Liquor Ordinances were processed through the office and published in the Federal Register.

7 Tribal court Reviews were conducted.

5 tribal courts have been scheduled for review in remaining FY 1988.

Inter-Tribal Appellate Court Systems.—In an attempt to strengthen tribal court systems, by providing them a forum in which to develop a written body of case law which could address unique differences in administering justice within Indian country three inter-tribal appellate court systems are being set up in the following areas: Albuquerque, New Mexico; Northwest Inter-Tribal Court Systems; and Wyoming, Montana Tribal Courts.

Alternative Dispute Resolution Study.—Pourch Band Alabama Creeks.

The CHAIRMAN. So, you can't trust 50 percent of the tribal courts?

Mr. SWIMMER. I don't know that that is the right number, Mr. Chairman. I know that if there is even one that should not or doesn't have the ability to make decisions in these kinds of cases that we shouldn't be subjecting to children or other people to those courts at this time, not exclusive jurisdiction anyway.

The CHAIRMAN. Isn't that a terrible indictment that we have not succeeded in setting up an adequate tribal court system?

Mr. SWIMMER. I don't know. It depends on where you are talking about, Mr. Chairman, because in many cases, there is no need for a tribal court. In many cases, there hasn't been a need for a tribal court. In many cases, up until funding was available, many tribes, not all, but many were doing very well using State court systems. Many tribes today contract and use State court systems. There are many tribal people who are judges in State courts.

We are not dealing with a situation where they are in total isolation. You have county, city, and State courts available on reservations now, and you have tribal courts out there.

As tribes develop and they want tribal courts, we are attempting to do everything we can to help them reach that stage. In Oklahoma, for instance, on the eastern side, none of the tribes have tribal courts. There is no court jurisdiction there for the tribes. By law, they have all been put under the State judicial system.

The CHAIRMAN. Do you believe that your agency, the BIA, has primary responsibility for monitoring State compliance with the Indian Child Welfare Act?

Mr. SWIMMER. I think so. I think our agency and I also think other agencies of the Federal Government involved in providing services to Indian children, but I would say that we are primary.

The CHAIRMAN. According to a survey conducted by the Indian Affairs Committee staff, the only BIA effort to monitor State compliance to see whether they meet the provisions of the act with the corrective action component is in the Portland area office.

Mr. SWIMMER. I would like to furnish the committee with a report on what our monitoring consists of, and I think that there is—I don't know the extent of it, but I do know that we do some, and I would like to have it explained to the committee how we do it, what the constraints are, and what the reports have shown.

The CHAIRMAN. Have you received reports from your field offices as to their activities on monitoring State compliance with the act?

Mr. SWIMMER. Hazel Elbert is here. I would defer to her on that if she would come forward and explain what the procedures have been.

Ms. ELBERT. Mr. Chairman, the Portland area office may do some activities in regard to monitoring State activity. We would have to check with them to find out exactly what they do, but we don't have a responsibility to monitor what the State does under this act. They are required to report to us, and we do get some reports, but I am not satisfied that the reports are a full report of their activity with regard to Indian children.

The CHAIRMAN. If the BIA does not have the responsibility of monitoring to see whether States are complying with the act, who does? This committee?

Mr. SWIMMER. Let me correct what I said based on what Hazel said, because I think my statement about it is our responsibility to monitor is what she reflected in that the States are required or supposed to be sending us reports. I am not sure how we would go about monitoring in the sense of oversight on a State system unless the State provides those reports to us.

We can obviously send people to the State and examine the records.

The CHAIRMAN. Are we satisfied that the States are sending in reports?

Mr. SWIMMER. In some cases, I think, but not in all.

Ms. ELBERT. Yes.

Mr. SWIMMER. I don't think we are getting as complete a report as we would like, and it is an on-going process to——

The CHAIRMAN. Will you submit a report to this committee as to the States that have been providing reports on this act? From what I gather here, you are not certain whether States are complying with the act.

Mr. SWIMMER. We have reports from 30 or 40 States from 1979 through the current year of adoption statistics pursuant to the Indian Child Welfare Act. We can furnish all of these reports that we have received to the committee.

[Information to be supplied follows:]

Under the current ICWA, the Bureau of Indian Affaris (BIA) does not have any authority to make States comply with the Act. The Act requires that states provide the BIA certain information concerning completed adoptions, but it does not give the BIA any enforcement authority. Accordingly, on several occasions we have gone out with general mailings to the states (court systems) informing them of their responsibility to report this information. This approach did not prove very successful, and our last effort was a directive to our area offices to make contact with appropriate state representatives to attempt to get this information (a copy of that memo is attached).

We also entered into an interagency agreement with the Department of Health and Human Services to complete a study of children in placement through the states, tribes, and Bureau, and to investigate issues of compliance with the ICWA. This study was completed approximately two weeks ago. A copy is attached for your information. This information is very complete and offers many insights into problems of implementation with the ICWA.

MEMORANDUM

To: All Area Directors.
From: Deputy to the Assistant Secretary—Indian Affairs (Tribal Services) Hazel E. Elbert.
Subject: State Adoption Reports Pursuant to P.L. 95-608—Indian Child Welfare Act (ICWA).

This is to request your immediate assistance in obtaining information required by 25 CFR 23.81 from the state(s) covered by your administrative jurisdiction for service delivery. Specifically, 25 CFR 23.81 and P.L. 95-608 mandate that, "any state court entering a final decree or adoptive order for any Indian child shall provide the Secretary of the Interior within 30 days of copy of said decree or order, together with any information necessary to show: (1) The name of the child, the birth date of the child, the tribal affiliation of the child and the Indian blood quantum of the child as required by Sec. 3011(a) of P.O. 95-608 (25 U.S.C. 1951); (2) Names and address of the biological parents and adoptive parents; (3) Identity of any agency having relevant information relating to said adoption placement."

The attached information was developed by Central Office Social Services staff from the states who have reported Indian adoption decrees for the period between 1978-1986. In addition, there is a listing of states who have not reported any Indian adoption activity since the passage of ICWA and these states are as follows: Arkansas, Connecticut, Delaware, Georgia, Hawaii, Kentucky, Maryland, Missouri, Montana, Nevada, New Hampshire, New Jersey, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont and West Virginia.

The reporting requirement only applies to Indian children who have been adopted in a state court proceeding (voluntary or involuntary) after November 8, 1978. Where the court records contain an affidavit of confidentiality from the biological parent(s), the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act, as amended.

We request all updated information be submitted to Central Office from each Area Director by close of business, September 16, 1987. All information collected is to be mailed to: Bureau of Indian Affairs, Acting Chief, Division of Social Services, Code 450, MS 310-S, 1951 Constitution Avenue, NW, Washington, D.C. 20245. The envelope containing all such information should be marked "Confidential".

Attachment.

ADOPTION STATISTICS PURSUANT TO THE INDIAN CHILD WELFARE ACT OF 1978 FROM 1978 TO 1987

	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987
Alabama				1						
Alaska		20	36	45	46	81	84	106	92	7
Arizona		13		2	2		1	3	2	
California		1			1				1	1
Colorado		5	4		1	3	5	2	4	
Florida					1					
Idaho				1						15
Illinois		2								
Indiana							1		1	
Iowa							1			
Kansas			1			1	1		2	1
Maine			1							
Massachusetts			1							
Michigan				1	2					
Minnesota	4	14	13	13	9	12	19	20	12	1
Mississippi			2							
Nebraska		1	2			7	1		2	

ADOPTION STATISTICS PURSUANT TO THE INDIAN CHILD WELFARE ACT OF 1978 FROM 1978 TO 1987—Continued

	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987
New Mexico						1			1	
New York			2	1		1	1			
North Carolina		3					1			
Oklahoma		5	15	7	10	4	22	12	13	7
Oregon				1	1	2		3	3	
South Dakota		2	2	1						
Texas								3		
Utah			2		2		1	1		
Virginia							1			
Washington		3	1			3		1	3	
Wiisconsin		2	5	3	2	1	2		2	1
Wyoming				1						

Mr. SWIMMER. Our concern is whether, because of the nature of the act, sometimes an Indian isn't going to disclose that to a court, and if they are not aware that there is Indian ancestry or Indian blood with an individual and they are not identifiable, they very well may not tell a court or a State adoption agency that they have any Indian blood or that they are members of a tribe.

Ms. ELBERT. Mr. Chairman, we do let our areas know that we have some concern about reports coming from the States and that they should be reporting to us on a regular basis. To get statistics like we have here, we had to put forth a concerted effort to get the reports.

We send memos to our field, and I presume that Portland, if they have some activity with regard to monitoring, it is a result of the memos that have gone out from the central office to them that we do need these statistics, that the law says that they are supposed to report to us.

We do have some statistics, but I personally am not comfortable that this is a full reporting of all of the activity that has occurred out in the States.

The CHAIRMAN. Well, we should commend the Portland area office for reacting and responding to your memos, but apparently the other offices have not.

Mr. SWIMMER. Well, I am not sure. I would have to see what the committee is referring to, but we have information from almost all of the areas by State, from Alabama to Wyoming, on statistics on adoptions of Indian children. Maybe Portland has sent some other information that the State of Washington or Oregon has. We also have those States included in this report, but many others.

So, I don't think that—as we said, this is coming from the State. If we got something out of Portland, it is because they followed through and went to the State. It is not our report. It is a State report where we received the information from the State coming to us, and we are assuming that all of our area offices have been following through with our request, because we have received information from different States.

We are just not satisfied yet that we are getting 100 percent of what we are asking for.

The **Chairman**. The clear conclusion that I have reached from your statement and that of the Secretary is that this is a bad, bad bill and that "the bill should not be enacted." Now, having said that, am I correct to conclude that you believe the present law is sufficient, adequate, proper, non-racist, and American?

Mr. **Swimmer**. I think there are some problems in the present bill, too, and I think that in the very first policy statement that we need to put a period after the words "best interest of the Indian child." I think we would be willing to recommend some changes, some amendments to the current law.

However, I do believe that the current law has provided sufficient protection on a continuing basis. It is not something that Congress is going to be able to mandate that anybody comply with anything. It is going to take time for us to get compliance.

The reports indicate that over the years, we are reaching good compliance, 80 or 90 percent in some areas, and I think we are, as people become familiar with the Indian Child Welfare Act as it exists now, that they are complying with it and, in fact, as I said earlier, we have some cases where tribes are reaching far beyond what we think even the intent of the act was to start with. They are already reaching out way beyond their jurisdictional boundaries.

However, I think there are some concerns about that which we would like to address in some amendments to the bill. But our primary objective in this, as I said, is to make sure that whatever the court does, tribal, State, or otherwise, that they look at the best interests of the child. Then, given all the weight of the other factors of being reared on a reservation in an Indian family, it is undoubtedly that the other principles that we are trying to accomplish here are going to be accomplished.

But we must start with the best interests of the child as our guiding principle, and I would say that the bill that we have now accomplishes that purpose. I believe that the proposed amendments are bad.

The **Chairman**. I thank you very much.

The vice chairman wanted to be here, as you know, but he has had an emergency. He should be coming in later, but I would like to keep the record open so that he and other members may submit questions for your consideration, sir.

Mr. **Swimmer**. Thank you, Mr. Chairman.

The **Chairman**. I thank you very much.

Next, we have a panel consisting of the director of the Arizona Department of Economic Security, Dr. Eddie Brown; and the division director of the Casey Family Program of Rapid City, South Dakota, Mr. Eugene Ligtenberg.

Gentlemen, welcome to the committee.

Dr. Brown, we will begin with you.

STATEMENT OF EDDIE F. BROWN, DIRECTOR, ARIZONA DEPARTMENT OF ECONOMIC SECURITY, PHOENIX, AZ

Mr. **Brown**. Thank you, Mr. Chairman.

Mr. Chairman, I appreciate the opportunity to address you today regarding the Indian Child Welfare Act. I do have a prepared statement that I will make available. I will try to move as quickly as possible through this, but I do want to make sure that I make certain points.

I am the director of the Arizona Department of Economic Security, and I am also an enrolled member of the Pascua Yaqui Tribe in Arizona.

The Indian Child Welfare Act provides for the establishment of relationships between the States and tribal governments in order to protect and preserve Indian families and communities. The State of Arizona fully supports the rights of tribal governments to intervene in child custody matters regarding children members of tribes.

The Arizona Department of Economic Security administers State and Federal employment and human service programs in Arizona and is responsible for child welfare programs, including child protective services, foster care, and adoptions. The department also licenses and monitors child placing group care and adoption agencies.

In Arizona, as you are probably aware, there are 20 federally recognized tribal governments which have jurisdiction over tribal lands. Reservations account for 26.6 percent of the total land base and are located throughout the State.

The total Indian population residing on Arizona Indian reservations is approximately 200,000. This represents the largest reservation Indian population in the United States and accounts for approximately 20 percent of the reservation Indian population nationwide. Forty-six percent of the reservation population is under 18 years of age.

Many accomplishments have been made as a result of the implementation of the Indian Child Welfare Act, and let me just briefly hit on a few:

A permanent Indian child welfare specialist position to coordinate for services for Indian children funded through State appropriations has taken place.

Thirteen on-reservation child abuse/neglect prevention and treatment programs are funded through State appropriations.

A tribal child protective service academy training program which has trained already 35 tribal workers during the past year.

An annual Indian child welfare and family service conference, now in its fourth year, to train State and tribal staff and define tribal, State, and Federal roles in the provision of services to Indian families as well as a project with the Arizona State University School of Social Work and the Inter-Tribal Council of Arizona to develop a model curriculum for child welfare workers serving Indian communities has been developed.

The use of formal intergovernmental agreements to pass through title IV-E foster care funding to tribes has been adopted. This agreement clearly recognizes the sovereign status of tribal governments.

We are proud of these accomplishments in Arizona and continue to work towards increased coordination of services and resources with tribal governments. We feel that the Indian Child Welfare Act mandates have given our State the impetus for these activities.

Now, what I would like to do is to keep my comments directly related to State-tribal relationships in regard to the amendments.

In the best of all worlds, the amendment provisions would mean that the tribes would take cases involving Indian child custody proceedings into their courts, relieving the State system of this responsibility. In reality, that currently does not happen.

It is the experience of the Arizona Department of Economic Security that the tribes are rarely able to assume jurisdiction early in State proceedings because of their lack of social service and judicial resources. Tribal response to notification of hearings needs to be strengthened and coordinated to ensure early tribal intervention and participation.

The proposed requirements for State agencies and courts solidify what has been the practice of Arizona Department of Economic Security and its courts. The department works closely with tribes in providing services for their members. The department has supported the tribes' roles in State court proceedings and has encouraged tribes to assume jurisdiction. We believe procedures in the amendment eliminate subjectivity in applying the act.

These provisions mandate additional efforts and record keeping that will require increased resources to be dedicated by our agency. It will be necessary to provide more detailed training of case managers in ICWA requirements and in the area of available resources. State attorneys prosecuting the dependency and termination proceedings will have additional trial responsibilities in order to protect the well-being of Indian children.

Now, there are three specific areas, however, that cause agency concern within Arizona. These are:

1. Separate State licensing standards for Indian foster homes.
2. Annual audits of private child placement agencies.
3. Funding guidelines and fiscal resources.

Let me just hit briefly on each of those three.

In regard to separate State licensing standards for Indian foster homes, the Arizona Department of Economic Security recognizes the interests of the Indian community to place children in foster homes that maintain social and cultural ties. Our department seeks to place all minority children, whether they be black, Hispanic, or Indian, in appropriate homes which meet health, social, and cultural standards to ensure a child's growth and stability.

The proposed amendment to Title I, section 105(f) states "if necessary to comply with this section, a State shall promulgate, in consultation with the affected tribes, separate State licensing standards for foster homes servicing Indian children and shall place Indian children in homes licensed or approved by the Indian child's tribe or an Indian organization."

The "if necessary" provision is unclear. Our department recognizes the licensing authority of tribal social services on reservations. Arizona would strongly object, however, to having separate State promulgate standards for off-reservation foster families of Indian descent.

We believe that our current rules allow flexibility and consideration of cultural and environmental differences as long as the health, welfare, and safety of the child is not jeopardized. Separate regulations would be impractical and unnecessary.

Arizona's rule promulgation procedures allow considerable public comment. State law, procedures, and the additional cost for such enactment make this section of great concern.

Second, annual audits of private child placement agencies. Title I, section 115 requires States to include compliance with the act by the private child placement agencies "as a condition of continued licensure" and further mandates State agencies to "annually audit such agencies to ensure that they are in compliance."

Throughout the country, it is recognized that there are continued abuses of the Indian Child Welfare Act procedures. To require State agencies, however, to monitor compliance of child placing agencies creates several difficulties. Let me just hit on those:

Licensing staff within Arizona rarely review more than 5 to 10 case files of a child placing agency. As it now stands, the extent of the audit is not clear and probably could not be met with existing resources.

State resources of time and staff are not sufficient to expand current monitoring functions.

Licensing staff, while they are knowledgeable regulators, however, such audit requirements would demand legal expertise not currently required by the social services licensing staff.

We would recommend that States be mandated to include, as a contract item, compliance with the Indian Child Welfare Act in licensing standards, not only for child placing agencies, but also for group care and adoption agencies.

Now, the third and last is in title II, and it refers to the funding guidelines and fiscal resources. Title II, section 203 addresses Federal funding guidelines to carry out the provisions of the act. These guidelines restrict grant awards to tribes or Indian organizations.

Since the act mandates State agencies to expand staff training, resource development, notification, legal requirements, licensing functions, Congress must recognize that States will also need financial assistance.

Neither the tribe nor the States can adequately comply with the act without sufficient funds. Indian tribes have received insufficient funds to meet the act's mandate since its inception. As the Indian Child Welfare Act case load increased, funding at the national level has decreased.

Congress must consider entitlement funds to tribes and to States where federally recognized Indian tribes are located. The Federal Indian Child Welfare Act funding needs to be greatly expanded.

I am aware that additional funds are available through title IV-B and title IV-E of the Social Security Act. Of Arizona's 20 tribes, only 5 tribes, the Navajo, Hopi, Gila River, San Carlos Apache, Tohono O'Dham, receive title IV-B funds, and only one tribe, the Gila River, receives title IV-E funds.

The Federal administrative requirements to receive these funds are complex and cumbersome. Tribes find it difficult to achieve the administrative sophistication needed for fiscal and programmatic compliance, particularly for title IV-E. Tribes should be able to access title IV-E funds directly from the Federal Government, and simplification of administrative requirements should be considered.

The proposed amendment, title II, section 201(c), requires further clarification regarding the responsibility and liability of the States with respect to tribal compliance of non-compliance with provisions under the Adoption Assistance and Child Welfare Act. States must not be held responsible for funds provided under title IV-B and title IV-E of the Social Security Act when such funds are no longer under the jurisdiction of the States.

I want to thank you for allowing me to present these issues here today. The rights of Indian children and their relationships to their tribes are extremely important. The realities of fiscal and programmatic resources which are available to the tribes and State child welfare agencies need to be considered prior to increased Federal mandates.

Thank you.

[Prepared statement of Mr. Brown appears in appendix.]

The CHAIRMAN. Dr. Brown, am I correct to conclude from your statement that you approve the measure with the exception of those shortcomings that you mentioned?

Mr. BROWN. Yes; and I am here, clearly, Mr. Chairman, to speak to the State-tribal relations. There are many other things that spoke to the bill that the State does not feel that it is in a position to respond to at this point in time.

The CHAIRMAN. You indicated in your second concern that the States should not be given the responsibility of monitoring compliance with the act, that your staff is inadequate, and the funding is not enough. Whom do you believe has the responsibility of monitoring compliance?

Mr. BROWN. Let me say that if further discussion were available and an agreement were reached where resources were made that would allow the State that flexibility, the State would consider it. However, as it now stands, I think it clearly stands in regard to the Bureau of Indian Affairs and the area offices to audit compliance.

However, I think they are in the same situation that we are in the lack of resources to be able to do the type of auditing job that is necessary.

The CHAIRMAN. For some time, I believe, you were the Director of the Division of Social Services in the BIA.

Mr. BROWN. Yes.

The CHAIRMAN. At that time when you were director, whom did you believe had the responsibility of monitoring compliance?

Mr. BROWN. The Bureau of Indian Affairs.

The CHAIRMAN. Do you believe that the funding requested by the Bureau is adequate to carry out the intent of the act?

Mr. BROWN. No, I do not believe that the funding requested ever for the Indian Child Welfare Act has been adequate to do the type of job that is mandated by the legislation.

The CHAIRMAN. We made a survey not too long ago. It was not a scientific survey—to find out what are the most used words in testimony, and we found that in the top five is a word "prioritize." I find it difficult to pronounce, prioritize, and the Secretary used it, I think, five times this morning, prioritize.

I am asking you to prioritize the issue. Where do you put child welfare?

Mr. BROWN. I would put child welfare at the top of the list, Mr. Chairman. Very clearly, when you look at the needs not only being faced by tribes but States currently, the needs of children in the areas of teenage pregnancy, alcoholism, drug abuse, suicide, mental health, all of those really relate to a need to go back and to ensure that we are providing some type of preventive activities.

This is not only a need for the Indian Child Welfare Act and the Indian communities but perhaps for all of our State in regards to the requirement.

The CHAIRMAN. From your perspective as one who worked in the Bureau and one who is now outside working with the Bureau and observing the Bureau, do you believe that in the process of prioritizing, the Bureau has placed child welfare, as you say, on the top of the list?

Mr. BROWN. Mr. Chairman, I believe that based on resources and the lack of resources, no, they have not.

The CHAIRMAN. Where do you believe the prioritizing process has placed the number one priority?

Mr. BROWN. Excuse me, Mr. Chairman. What do I believe has been placed as the number one priority within the Bureau?

The CHAIRMAN. Yes.

Mr. BROWN. Definitely on economic development.

The CHAIRMAN. Well, we have been analyzing the budget as presented to us. For example, in the area of personnel, we find that there are no cuts in the central office. Yet, we find drastic cuts of personnel in the field, grant programs cut by 50 percent, but personnel in Washington receive pay raises.

Is that good prioritizing?

Mr. BROWN. Mr. Chairman, I think it is clear when you visit Indian country and you visit the tribes and you look at the staff and the staffing out in the field in the area office, it is clear from the reviews that we did while I was with the Bureau that you not only had people who were undertrained, but also you did not have nearly the staff needed to do the kind of comprehensive family and child services that are needed on reservations.

As a result, you have tribal governments which are 638 or contracting out their social services, struggling to pull together and have done a magnificent job in pulling together Federal resources and State resources and tribal resources to meet the needs of Indian children and families.

I think that need is critical in Indian country. I do not believe that it is currently being service not only by the Bureau but by the other family and children agencies from the Federal Government serving Indian tribes. It is severely lacking.

The State within Arizona is committed to commit what resources, but even the State is concerned in regard to, particularly in Arizona, the number of tribal governments and the cost and the role of the Federal Government to provide the necessary monies to ensure strong families and children.

The CHAIRMAN. How would you rate our government's effort to provide adequate training for tribal courts? Adequate? Inadequate? Insufficient? Sufficient? Too much? Too little?

Mr. BROWN. Given their funding, I would say that they have made a very good effort. However, again, the funding for training and the dollars that can be put into training are so limited so that the type of training that needs to take place—very clearly, within the act, one of the needed areas for training is between tribes and

States and the tribal and State workers in coordinating and how that works between the court systems and between the agencies themselves.

There has never been, to my knowledge, enough dollars to do the kind of adequate training that is necessary. As a result, some States have also taken up and begun to provide training as the State of Arizona has done.

The **Chairman**. I thank you very much, Dr. Brown. We would like to submit questions for your consideration, if we may.

Mr. **Brown**. Thank you.

The **Chairman**. Mr. Ligtenberg.

STATEMENT OF EUGENE LIGTENBERG, DIVISION DIRECTOR, THE CASEY FAMILY PROGRAM, RAPID CITY, SD, ACCOMPANIED BY ELIZABETH GARRIOTT AND DARICE CLARK

Mr. **Ligtenberg**. Thank you for allowing us to be here today to give this input.

My name is Eugene Ligtenberg. I am the director of the South Dakota Division of the Casey Family Program. With me in this room are Elizabeth Garriott, a social worker from our office in Martin, South Dakota, serving the Pine Ridge and Rosebud Indian reservations; and Darice Clark, a social worker from our office on the Fort Berthold Reservation in North Dakota.

The **Chairman**. Are they here today?

Mr. **Ligtenberg**. Yes; they are.

The **Chairman**. Would you like to bring them up here?

Mr. **Ligtenberg**. Thank you.

The **Chairman**. Welcome, ladies.

Mr. **Ligtenberg**. The Casey Family program provides long-term foster care to children who cannot return to their biological families and who are not likely to be adopted as determined at the time of intake. At the current time, the program serves 97 Native American children plus approximately 600 other children in the western United States. Two-thirds of the Native American children are served in North and South Dakota.

We would like to give our support to the Indian Child Welfare Act of 1978, first of all, and also to S. 1976. We believe that S. 1976 would significantly improve the existing act.

The Native American culture is unique in this country, and it cannot be compared to other cultures and ethnicities.

Most Native American cultures have a natural foster care system that has been in existence for hundreds of years before contact with the majority culture. The process of acculturation and assimilation has drastically altered this system.

Many native cultures view children as a responsibility of the group or tribe rather than a possession of a set of parents. Individual rights were subservient to the group or tribe, because native people viewed life as a whole entity made up of everyone and everything in the universe. Native people need to have the opportunity of this responsibility being returned to them.

For many years, it was the policy of the United States Government to assimilate native people into the dominant culture. This assimilation was not by choice of the native people but was forced upon them.

Efforts to take away their unique tribal kinship and religious values have been devastating. Now that tribes are again strengthening themselves, we must provide laws and means for native people to reestablish themselves, their values, and their customs.

The Indian Child Welfare Act of 1978 as done much to reverse the movement of Indian children to non-Indian families who, for the most part, have not been helpful in establishing the unique identify of Native American children.

S. 1976 will protect children who are not currently protected by existing law. It is not the responsibility of Native American people to meet the demand of non-Indian families to have children through the adoption process.

The United States Government established reservations for Indian tribes to have their own tribal governments and to interact with the United States Government as separate entities. Hence, other ethnic groups do not need to have Acts of Congress protect and preserve their heritage and culture in this way.

We support the priority setting for placement. In our experience, when we have committed ourselves to the preservation of a child's culture, we have been able to locate homes for Indian children as provide in the act. Therefore, we do not believe lack of Native American families is an adequate excuse for not complying with the priority established in the act.

Many of the children with whom we work have previously been in non-Indian foster homes. Many of them have low self-esteem and lack identification with their culture. Many times, they have a negative perception about being a Native American.

In policy and practice, we are committed to providing Native American children positive role models within Indian families. In addition, we provide experiences designed to enhance their identify as Indian persons.

We support the amendments which require private agencies to comply with the act as part of their licensing requirements and which require States to make active efforts to recruit and license Indian foster homes.

We support the establishment of Indian Child Welfare Committees in each area to monitor compliance with this act on an ongoing basis.

In my opinion, an Indian child who is helped to have a positive identify as an Indian person has his or her chances of a happy, well-adjusted, productive life significantly increased. I believe that S. 1976 will increase the likelihood of that happening.

I urge your support and thank you for your consideration.

[Prepared statement of Mr. Ligtenberg appears in the appendix.]

The CHAIRMAN. You were here when Secretary Swimmer testified and clearly stated that this was a racist bill. If I hear you correctly, you have suggested that Indian children should be placed with Indian families. Am I correct?

Mr. LIGTENBERG. That is correct.

The CHAIRMAN. Do you consider your agency to be a racist agency?

Mr. LIGTENBERG. Certainly not. I believe that it is very difficult for many of us to understand what it really means to be a tribal member or to be associated with a tribe and what tribal culture means.

The CHAIRMAN. Do you find it difficult to find Indian foster homes?

Mr. LIGTENBERG. No, we don't.

The CHAIRMAN. I have read several articles written by eminent psychologists indicating that their studies would show that Indian children placed with or adopted by non-Indians have unique problems. For example, they find high rates of suicide, substance abuse, and runaways among them.

Do you find this to be true with your experience?

Mr. LIGTENBERG. I have found that to be significantly true, yes.

The CHAIRMAN. And I will ask all three of you this question, because uppermost in our concerns is whether this act with all the amendments will serve the interests of the child, not the interests of the tribe or the tribal leaders or the tribal courts.

Do you believe that this measure will serve the best interests of the Indian child?

Mr. LIGTENBERG. I believe that it will, because I believe that the best interests of the tribe and the best interests of the child are inseparable. That, again, becomes difficult for many of us to understand what it really means to be a tribe.

As I mentioned in my previous testimony, the Indian culture places higher priority on the tribe, frequently, than on individuals, and that is difficult for many of us who have been raised in this country to understand and appreciate.

The CHAIRMAN. Do you ladies agree?

Ms. GARRIOTT. Yes; I do, Mr. Chairman. I was the child welfare director for the Rosebud Sioux Tribe.

The CHAIRMAN. Would you identify yourself, please?

Ms. GARRIOTT. I am Elizabeth Garriott from the Rosebud Sioux Tribe, and I was the child director for the tribe for 5 years under title II. If I may, could I make some remarks to the comments that were made by the Secretary this morning?

The CHAIRMAN. Go right ahead.

Ms. GARRIOTT. Thank you.

The CHAIRMAN. You have traveled a long distance to be here with us.

Ms. GARRIOTT. Yes, and I am from the reservation, and I plan to die there, and I work with our Indian children.

I would like to remark that in the years that I have been with the tribe, I have never received any kind of technical assistance from the Bureau to write my Title II proposals, and they have always been very competitive, and the funding has been very low. It is almost as if the funding is given arbitrarily. I just would like to say that for the record.

Also, I think our tribal courts are more than adequate to make those decisions for our tribal children, whether they are on the reservation or off the reservation.

I think that on our reservation, we have judges who are trained. We have a person who is an attorney who works with the Indian

Child Welfare Act. We have advocates, and we also have a child welfare group that makes these decisions.

We don't just arbitrarily bring children back to the reservation. We look at all the possibilities of what is in the best interest of that child. If that child has never been on the reservation, there is no way that we would bring that child and subject that child to the life of the reservation if we feel that is not in the best interests of that child, and we feel very strongly about that.

The **CHAIRMAN**. I thank you very much. As you know, I was a guest of your reservation last week, and I would like to thank all of you and the leaders of the tribe for the hospitality extended to me.

Ms. **CLARK**. Mr. Chairman, my name is Darice Clark. I am from the Fort Berthold Reservation in Newtown, North Dakota, and our Casey office is situation on the reservation.

I wish to support the bill. It is in the best interests of the child.

I have also worked in the urban areas of King County and Seattle. I didn't really have any serious problems with the act at that time, and the amendments that are brought in front of us today, we feel, will positively add to the interests of the child. I have no problems with them.

The **CHAIRMAN**. I thank you very much.

I am pleased to call upon the distinguished colleague of mine from the State of Washington and the vice chairman of this committee, Senator Evans.

Senator **EVANS**. Thank you very much, Mr. Chairman.

I have no questions at this time, but, Mr. Chairman, I do have an opening statement which I would ask be submitted in its entirety into the record.

But just let me comment very briefly. The concerns, I think, which we are facing here are concerns of maintaining the integrity of families and, along with that, the integrity of some of the heritage and background of many Indian children which can be lost unless there is adequate attention paid to the families, the tribes, the culture, and the heritage of those young children.

That is why we are dealing with this act, why we are looking with extra care at the circumstances under which adoptions and other elements of child care are handled. I hope that as a result of this hearing and any subsequent legislation that might be passed that we do end up with both the desired end goal of placing Indian children in homes that are supportive and homes in which they have the best opportunities possible, but also homes in which the heritage and the culture of the tribes from which they come can be maintained and enhanced.

With that, Mr. Chairman, I would ask that the entire statement be placed in the record.

The **CHAIRMAN**. Without objection, so ordered.

[Prepared statement of Senator Evans appears in appendix.]

The **CHAIRMAN**. I would like to now call upon our third panel consisting of Mr. Robert B. Flint, counsel and board member of the Catholic Social Services of Anchorage, Alaska; Mr. Marc Gradstein, Esquire, attorney, San Francisco; and Mr. David Keene Leavitt, Esquire of the Academy of California Adoption Lawyers of Beverly Hills, California.

Gentlemen, welcome, and I believe we will begin with Mr. Flint.

STATEMENT OF ROBERT B. FLINT, COUNSEL AND BOARD MEMBER, CATHOLIC SOCIAL SERVICES, ANCHORAGE, AK, ACCOMPANIED BY SISTER MARY CLARE, FORMER EXECUTIVE DIRECTOR, CATHOLIC SOCIAL SERVICES, ANCHORAGE, AK

Mr. FLINT. Thank you very much, Mr. Chairman and members of the committee.

I also have with me and would like to introduce Sister Mary Clare who for nearly 20 years was the executive director of Catholic Social Services in Anchorage. She worked extensively with Native families, both birth parents and adoptive parents, and was involved in all agency placements. If you had any questions from somebody who had hands-on experience, she would be well able to answer them.

The CHAIRMAN. Sister, it is good to have you with us.

Mr. FLINT. I have a prepared statement which I believe the committee has. As you will note, the concerns that we address today involve only the area of voluntary adoptions. We do not get involved with children in need of aid, nor do we have a foster home program. Therefore, we are not able to speak with any expertise or background in those areas.

In the voluntary adoption section, we have two major concerns. First, the client's desire for privacy, and, second, the client's ability to participate in the selection of adoptive parents. There is also a third major area of concern regarding the timing of the withdrawal of a consent.

In the privacy area, I refer specifically to section 103(a)(2) on page 19 which requires notice to the tribe in the consent proceedings and to section 105(g) on page 25 requiring notice in the selection proceeding not only to the tribe, but to the family members which include step parents and all the way down to second cousins.

What the law does and is intended to do, as I understand these amendments, is specifically to withdraw any right of objection by the birth parent to the sending of notice to any of these groups or individuals. It is this part of the amendments that causes us trouble.

The reasons for birth parents coming to a voluntary adoption agency and their concerns are as many and varied as there are individuals. Any good social worker will encourage the birth parents to include their family members in the discussions and in the planning for keeping the children or for adoptive placement. That includes other agencies where appropriate, and, obviously, the tribe is one of them.

This is an intensely private and personal and troubling matter for the birth parents.There are many instances in which they do not want their personal lives and problems exposed to others. To require notice to be given over the objection of the birth parent is the equivalent of requiring the birth parent to wear a scarlet letter so that, in effect, his or her private life is exposed to public view.

There is no objection and, I think, can be no objection on the part of any agency to sending such a notice as long as the client or the birth parent herself or himself has the opportunity to say in this area, "I do not want my private life to be exposed."

Second, in the selection process, section 105(e) on page 24 prohibits placement outside the order of preference even if the preference of the birth parent is otherwise. This particular section runs counter to the trend in adoptions generally. This trend is very much toward birth parents involvement in the choice of the adoptive parents.

In this particular area, we find more and more open adoptions where not only are the birth parents specifying criteria, but they are also requesting to talk to the adoptive parents and to interview them to see if they satisfy the birth parents' criteria.

Those criteria include, of course, race and culture. However, there are also religious and professional criteria, social habits, size of family, and other criteria, including some which are subjective. This is particularly true in private adoptions where the birth parents go out and find their own adoptive parents and, simply for reasons of their own, like a particular family.

There are occasions for which I could give you anecdotal examples. One was, for example, a birth parent who was Russian Orthodox. Her prime consideration was that the family be Russian Orthodox. Despite our Russian background in Alaska it is not that easy to find a prospective adoptive couple who are Russian Orthodox.

What this amendment would do is to eliminate criteria other than race or culture from any consideration whatsoever as well as eliminate the birth father's or birth mother's own wishes.

Third, in the area of termination, the present law says that the consent may be withdrawn prior to the decree of adoption or the decree of termination, as the case may be. The procedure in Alaska is that after the consent is signed, the birth parent has 10 days to withdraw that consent for any reason. At that time in an agency situation, the child is then free for placement for adoption.

Typically, 6 months passes before finalization while the home study is in progress and the child is viewed in the home. That is a very critical period of bonding and if, in fact, the consent can be withdrawn during that period of time that the child is placed with the family, it could have an adverse impact, obviously, on the best interests of the child.

I have found myself, since I do a lot of relinquishment of parental rights, that the 10-day period works particularly well. I have made no scientific survey, but I would say easily one out of four or one out of five parents, both Native and non-Native, do change their minds within the 10-day period, withdraw their consent, and have no trouble understanding the procedure.

My suggestion as far as the act is concerned in the notice area is if there is a concern that private attorneys or voluntary agencies are over-reaching their clients, then I would suggest that we have already established a court hearing whereby the birth parent appears before the court for sworn testimony.

Now, already, our practice is to ask the birth parents questions regarding whom they want, what objections they might have to any notices, what their criteria are for placement, what opportunity they have had to select an adoptive couple, and, specifically, have they selected an adoptive couple. Thus, we put the objections and desires of the birth parents on the record.

If it were desired that the amendments be strengthened by, in fact, putting those requirements in the act as, for example, there are requirements to find out and certify that the parent understands the relinquishment in English, you could put similar requirements that the court certify as to preference requirements and confidentiality requirements for the client's protection.

As previously stated, we would request that the language of the present act in which the preferences of placement of the natural parent be considered be retained so that this right of choice be preserved as it is for all other individuals.

Finally, we would suggest that the present law for a decree of termination be retained.

I wish to make an additional point. I was made aware yesterday of testimony that was given in November before this committee which specifically singled out Catholic Social Services as a reason the law needs to be amended, and certain statements made there need to be corrected.

First of all, I think one should be aware that the draftor of that testimony is the opposing counsel in a contested adoption case that is presently before the Alaska courts involving ICWA issues. At the first level, the court determined on the ICWA issues in their entirety in favor of Catholic Social Services.

So, far from being above the law, as that testimony stated, the court has issued a ruling that we are in perfect compliance with the law. That case is under appeal now and I assume will be appealed through all possible levels.

However, the November testimony was that Catholic Social Services has specific criteria which prevent or discourage the selection of native adoptive parents. In fact, we have no such criteria, and we have no income criteria at all.

I personally have handled adoptions by parents, Native and non-Native, whose income level was as low as $12,000 a year which, in Alaska, is very low indeed. No one has been excluded for income or social criteria. The Agency does support itself in part on fees from its clients who are adoptive parents. However, these fees are adjusted according to income and can be completely waived.

Sister Mary Clare, in my discussions with her, cannot remember any time, over her nearly 20 years of experience where Native parents have been refused for any reason. In fact, there have been placements of Native children with Native parents. I have handled them myself regularly over the years.

The Agency always, as it must under the Indian Child Welfare Act, gives a native adoptive applicant preference over a non-Native. If a couple came in yesterday or even this morning and is qualified, they are preferred for adoption of a Native child over someone who has been on the list for two or three years.

Catholic Social Services, and I would think most adoption agencies of its kind, is not in fact an adoption Agency but an agency for parents and children. The first client is the birth parent him or herself. The agency is designed to help that person be comfortable with whatever choice he or she makes, to keep the child or not. In fact, Catholic Social Services is no longer primarily a source of children for adoptive parents. Because of changing social values, today there is less social disapproval of single parenthood and counseling of birth parents has changed radically. Whereas perhaps 10 or 15 years ago the majority of birth parents gave up their children, now probably 80 percent or more of those who come to Catholic Social Services keep their children, and it is part of the Agency's process to help them be comfortable with that decision. Only if the choice is made not to keep the child is adoption offered as a service to them. While the adoptive parents are, of course, very important, they are very much secondary to the concerns for the birth parent as a client and for the child.

I thank the chairman and the committee for their consideration. If there are any questions, I or Sister Clare would be glad to answer them.

[Prepared statement of Mr. Flint appears in appendix.]

The CHAIRMAN. I cannot speak for the committee, but as a member of this committee, I can assure you that your three areas of concern are concerns of mine, especially the area that deals with the confidentiality that the biological parent, I believe, are entitled to.

So, I can assure you that I will ask that these provisions be revisited and something done about it.

I thank you for your statement, and I am glad that you had the opportunity to present your position as to that last closing statement. We want to be fair with everyone here.

Mr. FLINT. I appreciate that, Mr. Chairman. Thank you.

The CHAIRMAN. Senator Evans.

Senator EVANS. Thank you, Mr. Chairman.

Let me deal with your own particular circumstances in Alaska. Could you give me a little historical background as to how many Native American children have been adopted and, of those, how many have been adopted into Native families? What has been the record?

Mr. FLINT. We as an agency—and this is the largest private agency—have, over the last 10 years, I would estimate placed perhaps 250 children in adoptive homes. Less than half of those would be Indian or Native Americans——

Senator EVANS. When you say less than half, do you have any idea of how many out of the 250?

Mr. FLINT. I would say about 100 or 110 or 120, perhaps one-third to 40 percent at the maximum. I tried to get the racial characteristics of the adoptive couples, but I can't get those. I think the majority of Native Children were placed in non-Native homes although there were a significant number of Natives, both Alaskan and American Indian, who were adoptive parents.

Senator EVANS. Those are pretty ephemeral figures. Could you for the record give us some more accurate, say a 10-year record, of how many total children, how many were Native American children, and how many of those adopted were adopted into Native American families?

Mr. FLINT. I can try to get that for you, and I would refer—these are figures that I don't know, but I noticed last November that Mr. Alfred Ketzler of the Tanana Chiefs Conference submitted some figures relating to State placement, those who were under State jurisdiction, and I believe these are in the record.

I will try to get figures for our Agency. It is difficult, however, Senator, because in addition, there is the private adoption area for which there is no, to my knowledge, readily available central collection point for statistics that I can have access to. But I can certainly get you more accurate than, say, the 250 gross and the 100 Natives over the last 10 years and submit that to the committee.

Senator **Evans**. All right, and of those 100 or however many there are, what kinds of families they were adopted into.

Mr. **Flint**. Yes, sir.

[Material to be supplied appears in appendix.]

Senator **Evans**. What is your specific position on the whole question of a Native child's village or tribe and their right to intervene in a voluntary adoption proceeding?

Mr. **Flint**. I think that the cultural aspect is extremely important, and the tribe should be involved to the extent of the permission of the birth parent. My only concern is where there is an objection by the client.

As I stated, a birth parent would be encouraged to deal both with family members and the tribe. So, I think notice is entirely appropriate save only the objection of the birth parent.

Senator **Evans**. How does that square with the question of confidentiality? How does the tribe ever know? How does it ever have an opportunity to intervene if confidentiality prevents them from getting information as to what is going on?

Mr. **Flint**. Well, I think if there is no objection, then you can give them notice, and I don't have any objection to giving them notice. However, if you accept the principle that a birth parent ought to have the right to keep those affairs private, then they would not know, because that is the very idea of confidentiality. She says or he says or both of them say, if they are both involved, that they simply don't want other entities, family members, or tribal organizations involved, because this is their personal decision.

All I am saying is that we think that principle, the right of privacy which adheres to that individual, should be followed. Otherwise——

Senator **Evans**. But under those circumstances, of course, your State of Alaska would be privy to that information, would it not?

Mr. **Flint**. The State of Alaska is. We are required in agency and private adoptions to give notice of the final adoption hearing to the State Department of Social Services. They check their computer for child abuse and other such things.

There is no notice required or intervention of any kind for the relinquishment or consent process by the State or anyone else.

Senator **Evans**. But there is notification to the State. Is that correct?

Mr. **Flint**. Of the final adoption hearing, not of the consent proceeding, yes. There is a notice to the State Department of Health and Social Services of the adoption proceeding. That is correct, and that is by State law.

Senator **Evans**. And you don't believe that should be extended to the other governmental unit which is the tribe?

Mr. **Flint**. I would be glad to agree that it should be extended to the tribe except for the objection of the birth parent.

Senator **Evans**. So, you distinguish between the governmental responsibility of the tribe and of the State.

Mr. **Flint**. Well, as I understand it, the reason for the State's interest and the reason for that notice is as I have said. They run the names through the computer to check for the adoptive parents to see if they have ever come up on any child abuse case or come through the system so they can presumably assure that the placement is not being inadvertently into a home that is inappropriate.

That, I think is certainly a governmental function and relates, I believe, to children in need of aid or at least preventing the abuse of children. So, I would think that would be a governmental function. That is what I understand they need it for.

Senator **Evans**. What about the potential abuse of a different sort in a Native American child being introduced into an adoptive home where all of the cultural and historical and similar ties of that child to the whole Native American community would be, in essence, destroyed or ignored? Is that of concern?

Mr. **Flint**. It is of concern, and the present act talks, of course, about the rights of the child as an Indian child, and it says the preference of the natural parent shall be considered in determining the selection.

The problem with a rigid system as the amendments would set up is that you don't take into account individual circumstances. There is a whole spectrum of people and their relationship to Native American society. Some have no connection at all. Some have a great deal of connection.

What the present law allows the court to take into account are those varied circumstances. I think that the court is permitted to do that and, indeed, is required to do that under the present law. But what the amendment would do would be to flip flop over to the opposite side and not take into account the wishes of the natural parent where, in fact, the parent or the child has no contact with the tribe.

The elimination of flexibility doesn't seem to me to do much for the child, whereas the present act allows those very items that you mentioned to be taken into consideration.

Senator **Evans**. In relationship to that whole thing, how do you interpret the section on page 24 where it talks in subsection (f):

> Notwithstanding any State law to the contrary, the standards to be applied in meeting the placement requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or family resides or with which the parent or family members maintain social and cultural ties.

Mr. **Flint**. Oh, I don't have any problem with that section.

Senator **Evans**. What if a family has neither of those, maintains no social or cultural ties and does not reside in the community? Would they then not be subject to these provisions?

Mr. **Flint**. I would assume not. The standards are referred to as those of residence or cultural ties. If neither of those are present, I assume the standard would not apply.

Senator **Evans**. But isn't that what you are worried about?

Mr. **Flint**. No; what I am worried about is (e) which is immediately above that section, Senator. The order of placement preference in law is not changed by the amendment. It is the same as in the present law.

The present law says that the order of preference can be varied or not followed. One of the reasons the court can change or avoid the preference is the wish of the birth parent. Now, what (e) says is that a placement preference expressed by the parent or Indian custodian or a request of confidentiality shall be considered, but only as long as the placement is within the order of preference. In other words, there is no ability to vary the order of preference.

Now, I give you two possible situations. One is in the strictly private adoption where, for subjective reasons, a birth parent has chosen a particular couple that the birth parent likes and just thinks they would be a fine family. If they are non-Native, then they cannot be considered because they are not within the preference.

In an agency circumstance where you present several couples to a birth parent for choice, as I mentioned in my remarks, there might be several categories. There might be, for example, a request for a specific religious belief, or specific social habits, that the mother shouldn't work, or there should be a certain number of children, or "I would like one of the people to be a teacher." I mean, there are all sorts of criteria.

And you might have a Native family, perfectly good, obviously qualified because they are there, presented which are okay but don't meet the criteria that are important to the birth parent. All we are saying is that those criteria are important to her. We think the court should be allowed to consider those and make them important in the placement, because they are important to the mother or father.

Senator EVANS. To what degree does the importance to the mother or father relate to the importance as far as the child is concerned? Who has priority?

Mr. FLINT. An agency considers that the first client——

Senator EVANS. In this case, I am not talking about agency or anything else. In your own view, who should have priority?

Mr. FLINT. My own view is that, first of all, the birth parent has priority.

Senator EVANS. Over the child?

Mr. FLINT. That is true, because when you come in, for example, it is the choice of the birth parent as to whether or not to give up the child or not. Now, the social worker, on an objective status, might think, "gee, it is better that this child be placed for adoption."

But that is not the choice for the agency or the social worker or anybody else, because it is the parent's right to determine what she feels or he feels is best for him or her under the circumstances as to whether to keep the child.

Now, once the decision is it is best for adoption, it is my view and the agency view that in the process of adoption planning, the prime person to consider what should happen to that child and how that child should be raised is also the birth parent. Beyond that, then you have the best interests of the child, because the agency is responsible for the child, but given the fact that the criteria of the birth parents are universally honorable and decent enough criteria, it seems to me to be inappropriate not to follow those criteria.

So, I would say the birth parent has that right of choice.

Senator EVANS. Interesting, especially when you compare it with the potential parallel of a mother and an unborn child.

Mr. FLINT. Well, I have considered that, and I don't think there is a lot of consistency in some of the law, but I am thinking——

Senator EVANS. Well, I am not talking about law now. I am talking about fundamental philosophy. It seems to me there may be an inconsistency, and I am curious about it.

Sister MARY CLARE. That issue is a good one. I am glad you addressed it.

When a girl comes in for counseling, she is the primary client. So, our responsibility is to her. Her baby isn't born yet. So, in the counseling process, I say my responsibility is to you to help you as much as I can. You have a responsibility toward your baby. And that is where she makes the responsible planning.

We see adoption as responsible planning, not giving up your baby. We don't use that term. It is placing your baby in a permanent home.

Now, the primary client does become so important in a sense because she is the one you are looking at, talking to, and she is the one who is having all the anxiety, remorse, guilt, doubt and who has to face her family, face her tribe, face the village when she returns.

And adoption is not a good word in the village. It can be something that she is going to have to—that is a stigma, too. So, what we have to deal with is so many issues and her own sound self-esteem.

So, attitudes are taught, not caught. You know, you come into an agency with low self-esteem very often, and you are often dealing with children. In some of the testimony you have, it says Catholic Social Services snatches babies, you know. I read it, thinking of these little 14-year-old girls that come in and say please help me. I didn't feel like I was snatching babies.

It is a big issue. It is harder issue when you have the teenage pregnancy, and that is a big issue in our country.

Senator EVANS. It surely is. But in this fundamental question of the relationship of rights between the child and the parent and the parallels between the mother and an unborn child and the mother and a child already born, that preference which I heard that the parents probably have at least the prime consideration over the child would not extend, at least in all circumstances, to the mother of an unborn child and that relationship, because you would not extend that, of course, to abortion, I presume.

Mr. FLINT. We would not?

Senator EVANS. Well, who has the prime right at that point, the mother or is it the unborn child?

Mr. FLINT. Well, I wouldn't personally extend the right of a parent or anybody else, for example, to beat their kid up, either. I mean, obviously, parental rights, as we know—that is why we have children in need of aid proceedings—do not extend to all dominion over your children.

All we are saying is that when you make parental decisions as to how the child should be raised, that is appropriate parental choice. I would also suggest that the idea of choice in placement is intimately connected with the decision as to whether or not to give up a child.

In fact, what you might have, although the birth parent might decide it is best for his or her own circumstances to give up a child, if she cannot get the family desired, then she very likely will not give up the child. She will keep it which is fine if that is her choice, but if it is her choice because the law does not permit her to select the family that she wants, then it is obviously an adverse choice for her and perhaps also not in the best interests of the child.

Senator EVANS. But isn't that a choice which is also modified by—if she has a family of choice and wants to place this child with a family of choice, what if the social services agency said that is an inappropriate choice?

Mr. FLINT. Oh, well, we are also required under State law to do a home study to qualify the families. First of all, in an agency circumstance as opposed to a private adoption, when a birth parent is presented with families or files of families, then these are all qualified people, whether they are Native or non-Native.

So, certainly there is a screening, although, in fact, those who get into the process and who want adopted children and the longer they wait, they are all very clearly qualified people. So, those are screened in advance.

Private adoptions also require home studies.

Senator EVANS. Well, in agency adoptions where you are providing alternative potential parents to that birth parent, to what extent does your agency, for instance, attempt to find, as a priority, Native American adoptive parents for a Native American child, or are you essentially assuming that this is something that ought to be race neutral and that other factors are the ones that ought to be considered?

Mr. FLINT. Well, the agency tries to keep up its list by general advertisements throughout south-central Alaska or simply letting the word be known. People come in who desire a child and ask to be put on the list and go through the home study. Those are Native Americans or black Americans or all sorts of Americans.

What we do is we follow the act, as I mentioned, in that those who are Natives get the preference according to the act as far as the adoptive placement of the child.

Senator EVANS. But in seeking out potential parents, you make no particular effort to seek out a bank or a group of potential adoptive Native American parents?

Mr. FLINT. Not any specific other than just telling the people in Alaska, including the Native Americans, that we are available. We would welcome the assistance of anyone who could boost those lists for qualified applicants.

Senator EVANS. You are saying that you are following the existing law. That is what we are dealing with now is the potential change in existing law and trying to figure out what, if anything, is appropriate in the change of existing law. I guess I am probing just to find if a new law that would either require or encourage the seeking out of potential Native American parents——

Mr. FLINT. Oh, that would be fine. I don't have any objection to that at all. I mean, this has been a relatively small agency. I am sure you have heard the resource excuse often enough, but there is no question but that one could do more. And if you wish to mandate that in the statute, that is fine. That is no problem at all.

What I want to emphasize is not the theory of the act or the preference which we have followed or to even say that we should not do more in recruiting Native Americans as adoptive couples. All I want to do is in this sort of group area is carve out a small right of individuals to make choices, and that is all.

Senator EVANS. Okay, thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. I thank you very much.

Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman.

First of all, I want to welcome my friends from Alaska. I have known Bob Flint for many years. He, as I am sure you are aware, is a board member and counsel to the Anchorage Catholic Social Services, a non-profit organization, and Sister Mary Clare has been in Alaska for, I believe, some 19 years working in the area of placing children in good homes.

I am sure that the issue is clearly understood that we have before us, Mr. Chairman, and that is whether these proposed amendments are unduly restrictive in not allowing the birth parent to basically have her recommendation on the placement of the child have any significant consequence. This is a position that has been—I assume Sister Mary Clare could comment on case situations where the mother has requested the assurance of privacy.

In small villages, to suddenly find that no longer is that confidentiality going to be adhered to nor are the wishes of the birth parent going to be followed, one wonders of the extraordinary discrepancy that would exist between a native woman who wants to put her child up for adoption and a non-native woman who does not have to run the risk of having her confidentiality breached.

I am wondering if either Sister Mary Clare or Mr. Flint could comment on what appears to be almost a violation of individual rights of confidentiality where the Caucasian woman could have that assurance, but under these amendments, a native woman would not have that assurance.

Sister MARY CLARE. Yes; that has happened to me several times with a white girl—that happens very often where the birth mother is Caucasian and the birth father could be Eskimo. Our agency is involved with counseling, so you counsel both to understand that they both have a cultural heritage here which is to be honored. So, within the confines of the counseling situation, they come to a determination.

Now, before the Indian Child Welfare Act, there was no problem. Now, there is in a sense. If we go by this new bill that is up——

Senator MURKOWSKI. The new amendments.

Sister MARY CLARE. With the new amendments, you must adhere to the native culture.

Senator MURKOWSKI. When you say adhere to the native culture, then we are saying that the native woman——

Sister MARY CLARE. That white girl——

Senator MURKOWSKI. Or the white girl, either one.

Sister **Mary Clare**. Right, according to the new bill cannot really determine which couple she chooses. Say she wants it in an all white home.

Senator **Murkowski**. Does that mean, Sister, that that woman has to publicly make known to the tribe that she is going to place the child up for adoption?

Sister **Mary Clare**. Yes; I just had a case like that last year.

Senator **Murkowski**. Now, in the case of Alaska, that would be the village.

Sister **Mary Clare**. Yes.

Senator **Murkowski**. The village would have to be notified.

Sister **Mary Clare**. Yes, which we have done.

Senator **Murkowski**. And that is in the new amendment.

Mr. **Flint**. Yes.

Senator **Murkowski**. OK, but a white woman wouldn't have to do that, a Caucasian woman?

Sister **Mary Clare**. Well, the State does it.

Senator **Murkowski**. I mean, the point I am trying to make is there seems to be a prejudice here which would mandate that a Native mother would have to notify the village regardless of her wishes while a non-Native woman would not.

Sister **Mary Clare**. Right.

Senator **Murkowski**. I would ask my friend the counselor if there is some violation of an individual's rights in so doing, because, obviously, the tribe would supercede. The needs of the tribe over the individual is what we are saying here, isn't it?

Mr. **Flint**. I am sorry, Senator. I didn't hear your question.

Senator **Murkowski**. The point I am trying to make is the question of the individual right of one woman, because she is a Native, to have to be mandated by not being able to keep confidential her wishes for the placement of that child vis a vis the Caucasian woman who would have the rights of privacy just as a matter of course and her own individual rights.

Mr. **Flint**. That is correct. You have people in the same situation deciding whether or not to give up a child. One, under this amendment, would have to give notice to various people, and one would not. There is a difference, yes.

Senator **Evans**. They are not really in the same circumstance, are they?

Mr. **Flint**. Well, they are both giving away their children.

Senator **Evans**. I know, but one is a Native American child and the other one is not.

Mr. **Flint**. Well, it may not be, Senator. We have had circumstances as Sister mentioned where the birth mother was a non-Native and the unmarried birth father—who is not a parent by definition under the act—was a Native or American Indian. So, the child then becomes qualified under the act, and the birth mother would have to have, under this legislation, the tribe and the extended family, presumably her own extended family which is not native, notified even though she has no cultural ties whatsoever.

Or, as has been said before, there are so many different cases among the large number of American people. Some Natives maintain a lot of contact with their cultural group. Some don't. Some haven't been back to the village for a long time. Yet, they would still have to notify.

Senator MURKOWSKI. What about the case of a mother who hadn't been back to the village for some time? Could the village simply mandate the disposition of that child if she wanted to put that child up for adoption?

Mr. FLINT. Yes.

Senator MURKOWSKI. We have, Mr. Chairman, in Alaska, of course, many of our native people who have moved from their village and moved to other States. I am sure they would never contemplate a situation where they would be required to bring that child back to the village upon the village mandate that putting the child up for adoption would require that kind of set of circumstances.

I think what we have here, Mr. Chairman, and I am sure you are aware of it, is a justifiable situation of the concern of the village and the tribe to maintain the heritage of their own people, but the realities associated with many of the villages in Alaska with which, of course, the witnesses are much more familiar than I, but which I have a good deal of familiarity with, are that in most cases, there are efforts made to place the children with native families, but not in all cases are there enough native families which can accommodate the children that are needful of a home.

So, on some occasions, they move outside the native family. It would be my interpretation that these amendments would restrict to the point where what do you do in the case where you do not have enough adequate Native homes available to accommodate these children and, yet, these provisions would disallow you from going outside the village area. So, you are caught in a catch 22.

What would be the provision as you see it, Mr. Flint, for a situation where in a particular village there were no more available accommodations? Would it then move to another village or——

Mr. FLINT. Yes; it would move to the third preference which would be another Indian or Native family.

Senator MURKOWSKI. And under your operation now, you currently attempt to find a native home. If you can't find a Native home, you what, move to the foster home, and Indian foster home?

Mr. FLINT. No; right now, the question to the girl is does she want the child placed with members of her family. Normally, if she is coming to a voluntary agency, the answer has already been decided. No, she doesn't.

Then would she like the child placed back in her home village. If she says no to that, then you are in the third preference, and you take those Indian or native families that are on your list and you give them preference.

So, they may not be the same. You know, I can't remember exactly, but I have had Alaska Native child adopted into a south 48 Indian family, that is, someone who had the type of background. So, we move down the preference ladder.

If we are required to adhere to those preferences rigidly, then we would not be able to move out the preferences even if the circumstances require it.

I think if I might comment, one of the problems with establishing rigid standards with human beings is that human beings with their own opinions and their own circumstances make their own categories. The trouble with doing it on such a rigid basis is that you may hit a big part of the problem, but you are going to create so many other problems, because individuals vary so differently.

If you could at least make your amendments flexible enough to take into account human variations, I think we wouldn't come back to you years later with some tales of injustices that were done because a statute was crafted so rigidly.

I don't detect that any of us are against the purpose of the act. Surely, we are supportive, and we are trying to follow it as best we can, and we certainly could do it better. I will admit that and be glad to have language that would make us do it better, but please don't lock individuals into such a rigid structure that they can't move according to their own desires and circumstances.

Senator MURKOWSKI. You are referring primarily to the wishes of the birth mother in regard to the placement of the child.

Mr. FLINT. Right.

Senator MURKOWSKI. And your interpretation that these amendments would basically eliminate——

Mr. FLINT. Put a lock on her.

Senator MURKOWSKI. And that is basically your objection.

Mr. FLINT. That is right.

Senator MURKOWSKI. So, are you suggesting any other language or just striking of that particular——

Mr. FLINT. No; I was suggesting that you could have some language, particularly—in my comments—in the initial court hearing with the consent or relinquishment, you could have as we do now but put it in the law that this girl's wishes were certified by the court, that this is what they were. So, you would have the independent court verification of what she wanted rather than just relying on the agency.

Senator MURKOWSKI. Well, how do you bridge what she wanted or what she may want with what is in the best interests of the child? Do you leave that up to the court?

Mr. FLINT. Well, that would always be up to the court, yes.

Senator MURKOWSKI. So, that would be left up to the court, but she would have an opportunity to voice a recommendation.

Mr. FLINT. That is right. You see, the existing law doesn't even say it has to be followed. What it says is that her wishes shall be taken into account which I think is appropriate language.

If in the odd ball case you had a totally inappropriate family, then her wishes wouldn't govern, but they ought to be considered.

Senator MURKOWSKI. I wonder, Mr. Chairman, if you might consider that the Senator from Alaska would be pleased to propose that as a corrective amendment at an appropriate time that indeed the wishes of the mother be so noted for review by the court which, to me, doesn't seem to be an unrealistic consideration for the court to reflect upon if indeed that would cure the concerns expressed by our witnesses.

Senator EVANS [acting chairman]. Certainly, at the end of this hearing, presumably, we would move on at some future date to the markup of the bill and be subject to whatever amendments at that point the members might suggest.

Senator MURKOWSKI. All right. I thank the chairman.

Senator **Evans**. If there are no further questions, thank you very much.

Mr. **Flint**. Thank you.

Senator **Evans**. Next, we have Mr. Marc Gradstein, attorney at law from San Francisco.

STATEMENT OF MARC GRADSTEIN, ATTORNEY AT LAW, SAN FRANCISCO, CA

Mr. **Gradstein**. Thank you, Mr. Chairman.

I think the questioning of the last witness has brought into focus the true change this amendment seeks to make in the existing law which, as he also said, no one seems to disagree with the existing law in spirit. I think what the Indian Child Welfare Act of 1978 sought to accomplish, which was the end of involuntary break-ups in Indian families—the approach to that was to be giving added protection to the parents so that parents wouldn't have their children taken away against their wishes by State courts that were insensitive to their special needs.

I think the focus in voluntary placements also has been to give the parents additional protection in the sense that they have to have their consents or relinquishments clearly understood.

I think the point where this bill, in my opinion, goes awry is the very point the chairman has just raised, and that is that we are going beyond the parents now to protect against assimilation. We are going now and saying the parent's right to make that decision should not be considered the primary concern.

I think one of the issues raised by Senator Inouye when he was questioning the gentleman from the Interior Department was whether or not the jurisdiction of the tribal courts under the new amended bill would be subject to objection by the parents. I think he was under the impression perhaps that if the parent objected, then jurisdiction would remain in the State courts.

From my reading of the bill, that is not the case at all. It appears to me that the bill is saying quite clearly that the decision, in effect, to place the child for adoption, the consenting to the adoption, takes away the parent's right to determine which jurisdiction he or she is under.

I think that is a critical question this committee has to wrestle with.

Do we want to tell people who are not voluntarily subjecting themselves to the jurisdiction of a tribal court by living on a reservation—they are living somewhere other than a reservation where they presumably feel they are subject to the same State court jurisdiction as any other American citizen—now because they come within this act—and I will address in a moment what constitutes coming within the act, because I think that is another critical area that must be examined by this committee—that individual who may live in Alaska or who may live in Texas and nevertheless be connected to an Alaskan tribe, since we are speaking of Alaska, that individual in Texas would be, as soon as she consents to the adoption, subject now and her baby would be subject to the jurisdiction of a tribe in Alaska.

I believe on page 12, the last two lines of section (b), it indicates there that the parent may object as under the present law but that the objection is then discounted as soon as the parent places the child.

In effect, what that does is it says that a parent by placing a child gives up the right to determine which jurisdiction has control over that child. In my view, although I don't like to use the word racist, that was used earlier, I think what it does do, is it takes certain rights basic to all other American citizens away from that parent of the child within this act.

As such, I think it is a bad idea.

I am not saying that we want to have the mother not make a placement that is sensitive to the needs of this child and the cultural needs of this child, whatever background it may have. But I think we have to let her make that choice, not a court.

I would like to turn to the other issue that deeply troubles me in regard to this bill which has not been discussed yet this morning, and that has to do with the definition of who comes within this act, because I think there, too, we look at a potential for serious difficulties both legal and practical.

That has to do with the definition section of the bill which expands the definition of an Indian child far beyond what we had in the initial act. The initial act basically brought a child within the act if the child was eligible for tribal membership, a clear, understandable, meaningful standard.

At section 5 of the definitions on page 7 of the bill, there is the additional section (c) added to the original act at line 20, which I have absolutely no understanding of how that can be workable. It basically says that a child of Indian descent is within this act.

Now, when we are talking about tribal membership or eligibility for tribal membership, we have a clear standard that, along with being subject to the act, also grants that individual the potential for certain tribal benefits.

Indian descent, I feel, is such an amorphous concept that it could include people who have so little connection with that particular aspect of their heritage that it would be ludicrous to treat their children, against their wishes, in a tribal court they have no connection with, as Indian children.

I think if the amendment is not amended to delete that addition, it will be like a monster. It will make for trouble that is beyond our wildest dreams, and I would urge the committee to rethink that issue, because I think the implications are scary.

That is all I have to say.

[Prepared statement of Mr. Gradstein appears in the appendix.]

Senator Evans. Thank you.

As you read the section on page 24 of the act—you may have a different page number. This is section 105, subsection (f). Do you have that?

Mr. Gradstein. Yes; I am looking at it.

Senator Evans. At least the first one-half or two-thirds of it is pretty much a restatement of current law. How do you interpret that in terms of applying the standards of this act, the preferences that are listed in previous subsections of section 107, when it says that the standards to be applied shall be those of the prevailing social and cultural standards of the Indian community in which the parent or family resides or with which the parent or family members maintain social and cultural ties.

Now, that is essentially the current law. It is maintained or retained in this act. What if the parent or family members do not reside on the reservation or have no social and cultural ties with the tribe? Wouldn't that by omission exclude them from the standards applied in section 107?

Mr. **Gradstein**. If this were the only change in the law or the only portion of the law we were focusing on, I would agree. I think it is the concern that the decision over the child's future would be made by, potentially, the tribal court itself.

Senator Inouye earlier asked the question—I think before you were here, Senator—of whether tribal courts are competent to make these decisions. He asked that of the gentleman from the Interior Department and received a sort of a 50/50 kind of answer.

I don't agree with that answer. I think that tribal courts are competent to make decisions. I just think that they should be making decisions about the subjects that come within their normal jurisdiction.

My objection is not to the tribal courts. It is to the expansion, this almost extraterritorial kind of expansion, of tribal court authority to non-tribal court matters. That is the fear I have.

They may look at this and say there is no social tie here, but nevertheless, wouldn't it be better for the child, since the child is one quarter or one-eighth or one-fiftieth Native American, to have the child raised on a reservation by an Indian family. They may not make that determination, but to let a woman making the decision of whether or not to abort her child, or whether or not to have her child placed for adoption, live with that uncertainty is to create, I think, some very dangerous results.

It may never get to the tribal courts. She may go ahead and have that abortion, if she doesn't know. She may just keep the child or she may, as has been suggested in some of the written testimony I have read, simply not tell the truth when asked what is your background as a means of avoiding——

Senator **Evans**. That, of course, is always possible in any circumstance.

Mr. **Gradstein**. Yes; I think the impetus for her to do that, though, is much greater if, against her wishes, she is being told that by telling the truth, she may find her child not going where she thinks is best for it, but going where some person unknown to her might consider a better choice.

Senator **Evans**. Isn't that the case when they go in front of a State court?

Mr. **Gradstein**. No; because in a voluntary placement, the mother chooses the family. The mother picks the people that she wants to have adopt her child.

When I adopted my son, his mother and I knew each other. She said, "I want this man and his wife to adopt this child," and the State court simply said, "Is there any reason not to grant her wish?" Is there anything about this family, having studied them through the social services process, that would indicate that it would be contrary to the child's best interest? But we respect her wish to make that selection unless there is." As such, the court granted that adoption.

Now, if she had been part native American, which I don't believe she was—frankly, I never asked her that question. This was before this act was written. She could have been. I wasn't particularly concerned with what her background was.

However, if she had been part Native American, even the smallest part or even if she were totally non-Indian, but the father of the child were the smallest part native American, and when she told him she was pregnant, and he said I don't know anything about it, it wasn't me—so, here she is in that situation, at 15 years of age, trying to make a decision that is very, very important to her as to where this child she loves, and she does love this child, is going to be adopted and raised and by whom, and she is being told, "Sorry, young lady, we can't guarantee your placement with Mr. Gradstein, or my client, or whomever, because it may be that, when we notify this tribal court, that is in some way involved, they will say, "We have a better idea," and that will take precedence over her idea.

I think that kind of law is so paternalistic and scary, in terms of being almost a big brother government concept, that it would be terribly chilling on adoptions.

Senator EVANS. Haven't we been a big brother government to the Indian tribes generally over the last 150 years?

Mr. GRADSTEIN. I think that is one of our failings as a government, and I think what is so good about the Indian Child Welfare Act, as it is presently written, is that it says that Indian parents have rights that should be respected, and I fully agree with that.

It says that before you take a child away from an Indian parent involuntarily, the courts must do all sorts of things to protect that family from being broken initially. If, after expert testimony and substantial burdens of proof, the court determines that this child must be removed from that Indian home, then at least every effort must be made to place that child with another Indian family.

That is what we have done. We have given the Indian parents rights against that kind of paternalism in the act of 1978, and I applaud that. We have also said that the Indian parent who wants to place the child voluntarily, may choose with whom to place that child, so long as it is real clear that that parent is doing so knowingly.

That is why we bring the parent into court and have a judge read, in effect, Miranda warnings of a sort to this person, and say "Do you understand what you are doing?". And we give her the right to reclaim that child, right up until the last minute—unheard of in State courts, without any question.

My feeling is that big brother is backing off in the law of 1978 and saying: "Give these people, the parents of these Indian children, the right to make these decisions. Let's not break up families."

As far as this bill wants to go ahead and monitor whether that is being done—it sounds like nobody is monitoring that from the testimony of the Interior gentleman—I think that is a commendable goal, and I agree with it.

But I think when it goes to the point of including within its ambit, all persons of Indian descent, no matter how slight, or how significant, and when it takes away the right of the Los Angeles resident, who has no desire to be living on some reservation that she had never been to, and she is not even of American Indian ancestry herself, but the father happens to be slightly Indian, and suddenly, she is subjected to the tribal court jurisdiction of a court in another part of the country, I think that is going too far, and that is what I am fearful of.

Senator EVANS. Of course, I have always thought all children were the subject of two parents, the last I checked.

Mr. GRADSTEIN. That is my understanding.

Senator EVANS. You can't totally ignore either the father or the mother in these circumstances. Obviously, there are differing considerations, and I think the courts have well recognized those in terms of the mother's particular interest, but there are two parents——

Mr. GRADSTEIN. I fully agree.

Senator EVANS. And I think they should both be considered.

However, again going back to that I read, doesn't that to you say that for those people who are off the reservation who have no cultural and social ties that at least that section which sets forth the priorities of adoption—the priorities of a member of the Indian child's family, a foster home licensed or approved as an Indian foster home, that list—would not apply?

Mr. GRADSTEIN. I think it is very vague what that would mean. I think a court could do practically anything with that. It says the social and cultural standards of the Indian community in which the parent or family resides or with which the parent or family members maintain social or cultural ties.

We could be talking, just for the sake of argument, about a father of a child who is of a very small percentage Indian—let's say he has an Indian great grandmother with whom he maintains some contact—and he has been found guilty and convicted and sentenced for the rape of the mother, and he is serving his time in prison right now, but he maintains some social ties with that great grandmother, and the woman is non-Indian. Theoretically—I am not saying that tribes are going to run around doing these things, but the fear of it, I fear, will be chilling on birth mothers.

Senator EVANS. And your concern is not so much the competence of the tribal courts but——

Mr. GRADSTEIN. Or the good will.

Senator EVANS. But culturally what they might be required to do.

Mr. GRADSTEIN. I just think that the unknown, to a person of a different culture—just as we are focusing on the difference in the Indian culture, to the non-Indians, the Indian culture is an unknown, and something not to be taken for granted.

Someone who grows up in San Francisco or Los Angeles or here in Washington, and has no connection with the Indian culture, and is suddenly being told when she comes to my office and says that the father of this child is a very small part Cherokee, suddenly she has to deal with: What does that mean? Who is going to decide about the fate of my child?

I am fearful that the result, in practice, will be something other than what this act intends and not to the benefit of Indians or adoptions or children.

Senator EVANS. At some point, there are differing interests, interests of maintaining a cultural identity and interests in the parental choice, and, in each case, they are of differing ratios. Is there a legitimate dividing line, a point where one takes some precedence over the other? Or, in your view, is it simply parental choice?

Mr. GRADSTEIN. I think that the parental choice to submit to the jurisdiction of a tribal court ought to be the way you decide which body determines—just like in any other matter—which body determines the applicable law.

If I go on an Indian reservation, and I do something that is in violation of the tribal court law, I am subject to that law. If I leave, I am not. If I am a tribal member and I leave, I am not.

I think the tribal members do deserve the same—or, of course, the people who aren't tribal members but are slightly Indian—that is the other issue that just so pervades this bill that I just can't leave it—they don't have that right. They don't have that same choice, of choosing the jurisdiction in which they are subject to the laws, and I think we have to give people that right.

Now, if in an involuntary proceeding—I would go along, I think very happily, with the section (c) definition, the Indian descent definition, if it were done in this way. You have an involuntary proceeding. Someone is, let's say for the sake of argument, in San Francisco, and the Department of Social Services says, "This child should be taken away from the parent involuntarily."

The parent says, "Wait a minute, I am of Indian descent, and if you are going to try to take my baby away, I would like to make a motion in this court to join the tribe and have my Indian descent respected so that this decision could be made by a tribal court." If it were done in that fashion, I think that is fine.

I think as long as we give the parents the choice, we are on the right track. I think once we take it away from them, then that very question you raised earlier about abortion is this terrible inconsistency we have.

On the one hand, we are saying to this same person you may kill your baby, under present law, without anybody's permission—without the father's permission, without the court's permission. You just walk in there to that abortion clinic, and you have solved your pregnancy problem.

However, if you go ahead and give that baby life because you love it, suddenly, you are the victim of all these conflicting, complicated social pressures; unless we allow this woman to have the choice to say, "I want to maintain my privacy."

Why? The obvious reason is simply a matter of people who don't want to have to say that they have had a relationship at 15, but I think, frankly, it may even be more true among tribal members who, at a very young age if someone is pregnant and it is found out—I have had this said to me as a question by someone on the telephone. She said I don't live on a reservation. I am not subject presently to the tribal court jurisdiction, but I associate with people from my tribe. In fact, that is how I got pregnant. I think she was 12 she said, and if anyone finds out that I am pregnant, I will be shunned. That was the way she put it. My reputation will be gone. I will not have a social life, not as I presently would.

What can she do? When I told her about the act, she has a real problem. In California, that tribe has to be notified, and as soon as they are notified, if her aunt Tilly is the enrollment officer, her privacy is out the window.

I have had that question more than once in different contexts, once when a woman was married and she separated from her husband and got pregnant. She had already determined that her children were not enrollable tribal members. She had had children with her husband, and the man by whom she got pregnant was, very apparently to her, non-Indian.

Under California law, she would have had to notify the tribe back in Montana, and she said her mother was the enrollment officer, and if her mother knew that this had happened, she couldn't go back, not even for a visit.

I think those considerations——

Senator EVANS. What you are saying in what you just described is that a person holding a position of responsibility within an Indian tribe doesn't maintain the same standards of confidentiality that the State would.

Mr. GRADSTEIN. No; what I am saying is that privacy is such a critical issue in adoptions that if we force people to give that up to people who know them—I am not saying that any tribal officer would run around telling everyone. I have no reason to believe that. But in this case, the woman said it is my mother, the very person she is trying to avoid finding this out.

I personally feel she ought to have the right not to have her mother know this. This was a grown woman, a mature person. She was back with her husband. They were trying to reconcile, and we had a real problem.

Senator EVANS. While that may more frequently be the case, it is not impossible that that be the case with the State agency or notification and the confidentiality within the State as well.

Mr. GRADSTEIN. It could happen.

Senator EVANS. It could happen.

Mr. GRADSTEIN. I think the likelihood is much less, though.

Senator EVANS. Oh, sure, the likelihood is less. The principle is the same.

Mr. GRADSTEIN. True. It just adds one more special problem for the native American mother that the non-Indian mother does not have. That is what I am trying to say. We are, in a sense, discriminating against her, in an effort to do a good that I am not sure we will end up with, if we make this the law. I don't think we will. I think we will end up with something much worse.

Senator EVANS. OK. Thank you very much.

Mr. GRADSTEIN. Thank you.

Senator EVANS. Let's turn to Mr. David Leavitt from the Academy of California Adoption Lawyers of Beverly Hills, California.

STATEMENT OF DAVID KEENE LEAVITT, ESQ., ACADEMY OF CALIFORNIA ADOPTION LAWYERS, BEVERLY HILLS, CA

Mr. LEAVITT. Thank you, Senator.

I want to express my appreciation to the committee and to its staff for making room for me to testify. I know it was a long witness list, and I am going to not read my prepared remarks which I have submitted.

Senator EVANS. Your full remarks will be placed in the record.

Mr. LEAVITT. Thank you, Senator.

I am coming from a different direction, and I think it is important at this point. Generally speaking, as an individual in the world of adoption, I can associate very fully and sympathetically with the remarks of Mr. Flint and with Mr. Gradstein.

On behalf of the Academy of California Adoption Lawyers, however, I am only authorized to address two issues which I think are serious issues and which are not in disagreement with the fundamentals of the Indian Child Welfare Act. I doubt if there is anyone in the room here who really opposes the Indian Child Welfare Act or the aims of that act. Everybody here disagrees on whether it is doing it properly or well but not as to the reality and the propriety of the aims.

Now, I am coming from a State which is very different from any of the States represented by the Senators on this committee except for Senator Inouye. Senator Inouye and I are both from States where everybody is from somewhere else.

The Indian tribes and the Native Alaskan villages that have been the subject of discussion by Mr. Flint are right there in Alaska. Their children are being placed, generally, with couples in Alaska. If the tribal council or the tribal court wants to intervene, they are right on the scene, and they are generally dealing with offspring of Indian population.

Everybody today up to this point has been talking about Indian children as if it were taken for granted that they were the offspring of member of the tribe at or near or in contact with the tribal authorities or the tribal organization. In California, it just is not what we are dealing with.

Almost all the children in California which are subject to adoption and subject to the Indian Child Welfare Act are involved with tribes thousands of miles away. There isn't a single Indian tribe within 3,000 miles of Honolulu, and they are 6,000 miles from the Algonquin. Our Indian ancestors in California are never local people, and they are almost always intermarried with non-Indians.

So, what I am talking about are the youngsters who are not clearly Indian.

Also, I want to latch onto a comment made before you got here, Senator Evans, by the representative of one of the South Dakota tribes, and that is our tribal councils aren't interested in grabbing these children from far away who are only part Indian. As a matter of fact, that isn't the purpose of the Indian Child Welfare Act.

The Indian Child Welfare Act was designed to protect the interest of the tribes in the retention of their children and from the forced or induced or artificial assimilation into the general population which was taking place 10 years ago in Arizona and Utah and so forth. I don't have to remind you what these specifics were.

What we are dealing with in California are a bunch of children that have some ancestral connection to an Indian tribe. The tribe itself has no part in their daily lives. They have no interest in the tribe. Their parents have no interest in the tribe. Sometimes, the parent is an unwed father, and we can't even find him.

The last thing in the world the tribe is interested in is claiming this child. I believe that that child was not within the purview of the original act, but I think when the original act was put through, the focus was so completely on the perspective of the Indian tribe and the youngsters who were either conceived or born on the reservation or near the reservation that the impact on the non-Indian community was not considered.

So, I come here to urge two things on behalf of the committee. I urge that the definition of the Indian child to be included within the scope of the act be refined.

It seems to me that there should be two elements that the committee should include in defining the Indian child within the act. It should be either entirely of Indian ancestry or mostly of Indian ancestry, and if it is of less than half Indian ancestry, there should be an additional requirement of ethnic connection to the tribe.

In other words, Mr. Taylor and I had a telephone conversation where he defined this concept of within its community as based on a 1938 court case, and it referred to persons who weren't exactly within the tribe but they lived nearby and they interacted with the community of the Indians.

Well, if the act wants to include their offspring, I have no objection to that, but these were people ethnically and ancestrally connected to a tribe and within its culture and their children's culture was properly to be preserved. What we are dealing with in California are youngsters—mostly it is the father of the child who is claimed to have Indian descent, and he isn't there anymore, or if he is there, he won't admit paternity, and half the time you can't figure out what tribe it is.

Louise Reyes of the Bureau of Indian Affairs—I saw her in the back of the room a little while ago—Louise gets the inquiries from California, and she will confirm that 90 percent of the time, California's inquiries trying to establish an Indian connection for the child gets a response from Washington that they can't find it. Meanwhile, the child is tied up in the system and doesn't get adopted.

We have another thing which I find shocking. I was talking to the county counsel of the biggest public adoption agency in the whole United States, and he told me very frankly that when the word "Indian" comes into a possible ancestor, they start putting all their non-Indian cases ahead. They just don't have enough staff or budget to really deal with the cases where a part Indian child with an indefinite Indian ancestor might get them involved in the Indian Child Welfare Act. So, they just put that child's case aside.

Well, it seems to me, Senator, most of this is definitional and that if we can arrive at a definition that the Indian tribes will have proper access to the children that they are really interested in who really has cultural ties to the child and sufficient ancestral roots in the tribe, then the act itself will focus on its own real target, and it will permit funds and administrative time to be used in pursuing the interests of youngsters who really do belong within the purview of the act.

The other element I want to touch on briefly is the problem of the unwed father. The act as it presently stands applies to unwed fathers where they have acknowledged paternity or their paternity has been adjudicated.

The thing that is significant about this is that when a person admits paternity or his paternity has been adjudicated, you can reach out and find him and bring him in to procedures, but the problem that we are dealing with is the unwed father who isn't there or maybe it is one of three fathers and one of them is Indian, and we don't know which one fathered the child, and the child gets all tied up in delay while people are looking for a father.

So, I would urge that the unwed father provisions of the present act be retained and that the only unwed father subject to the act be those who are adjudicated or acknowledge paternity.

This concludes my remarks, Senator, in view of the written presentation I previously made.

[Prepared statement of Mr. Leavitt appears in appendix.]

Senator EVANS. You mentioned the difficulties in California. I understand you have a parallel State of California Indian Child Welfare Act.

Mr. LEAVITT. Indeed, we do.

Senator EVANS. And what is the definition of an Indian under that act?

Mr. LEAVITT. We only refer to the Federal act. We have regulations—we have a State statute which requires compliance with the Indian Child Welfare Act, in effect, but it doesn't make these definitions on its own. Again, if the Federal act were redefined to include the more better defined group of Indian children, the California law would follow.

I might add, by the way, that California always notifies the tribe when it is alleged that there is an Indian ancestor somewhere along the line—notifies the BIA, not necessarily the tribe, because it might not know the tribe. But California gives the notice, and our problem is with the children whom the tribes are not interested in, and this is what I would like to see defined out of the act.

Senator EVANS. Does your act, however, require that if there is a declaration or assertion of any form of Indian ancestry that you notify the Bureau of Indian Affairs?

Mr. LEAVITT. I believe that it does. I know the State routinely does that. The attorneys don't do it.

Senator EVANS. Isn't that what slows things down and scrambles them? When your State law requires the notification, you in your testimony earlier on said that you have a big problem in California. Isn't it your own State law that creates the problem?

Mr. LEAVITT. No; because our State law follows the Indian Child Welfare Act, and if the Indian Child Welfare Act were revised to narrow it down, I know our State law would adjust to that.

Senator EVANS. But you don't notify or request any adjudication from the Bureau of Indian Affairs?

Mr. LEAVITT. Yes; we do.

Senator Evans. When you do that before there is definite knowledge of whether that person is eligible for membership in the tribe or the other very specific things in the current law, you go to the Bureau of Indian Affairs, and it gets lost in the maw of the bureaucracy.

Mr. Leavitt. It is not so much that. It is that most of the time, the connection with the tribe is so ephemeral, it is so indefinite, that the tribe can't find this person. I am not talking about the one who walks in the door and he or she is an Indian. She is a member of the Navajo. She is enrolled, or the father of the child is enrolled. You know who they are. You know where they come from. You notify the tribe.

That is not our problem. Our problem is with the part Indian, the culturally unconnected Indian, the one who has an Indian grandmother and doesn't exactly know which tribe it is, or one Choctaw and one Cherokee. We have terrible problems with the Cherokee simply because the major tribe in the country that does not require actual enrollment is the Cherokee.

Most tribes require enrollment, so if someone says he or she is an Iroquois, you then ask the next question: are you enrolled in the tribe? If that person says no, then the act doesn't apply to that person's offspring.

But when you ask them and they say Cherokee—and most of the Native Alaskan villages also do not require enrollment. So, when you have one of those people, you send to Washington, you send them a name, and they can't find anything. Washington consults the village or the tribe and comes back with no name.

It delays adoption proceedings and sometimes so long that the child can't even be adopted by the time it is free for adoption. It puts involuntary termination of drug abused children, of tormented children, of abandoned children—it puts their freedom from parental custody control and availability for adoption on a long track.

It just seems to me that a lot of it could be dealt with by redefining Indian child so that the definition focuses on the ones we are trying to protect and that the tribes are interested in but clearly eliminates the marginal, the mostly assimilated, the only part Indian child that, right now, the act takes in.

I don't think anybody really cared about when the act was drafted. It is just one of those unintended consequences which has had serious effects and which I urge the committee to address.

Senator Evans. So, you are not even talking about the potential amendments. You are talking about the current law and its requirements.

Mr. Leavitt. Two things. I think the current law should be amended to narrow the definition of Indian, and I think the amendment that would bring the unwed father within the scope of the act who has not been adjudicated or admitted to be the father—I think that amendment should be disapproved.

I think the absent, uncertain, running away father who is not admitting paternity is such a dreadful problem that even if he is an Indian, coping with that problem is just too deleterious to the need of children for prompt placement in good homes to delay placement while somebody goes trying to establish paternity from a fellow who doesn't want to be found.

Senator EVANS. I understand all that, and it is a difficult problem. The unfortunate end result is that the child carries half of that parent's genes and characteristics and blood. You know, even if the father is long gone and doesn't care, that child for a lifetime is going to carry that heritage.

Mr. LEAVITT. Well, Senator, what we are talking about is whether a very complicated Federal law involving tribunals and jurisdictions, in California's case, almost invariably thousands of miles away, with which the parties to the case have no connection—whether that is wise, and I submit that it isn't wise.

Senator EVANS. All right. Thank you very much. You have been very helpful.

Mr. LEAVITT. Thank you.

Senator EVANS. The next panel is Ms. Violet A. P. Lui, Ms. Evelyn Blanchard, and Ms. Margaret Rose Orrantia. Ms. Lui is the attorney for the Navajo Nation, the Department of Justice, Window Rock, Arizona. Ms. Blanchard is vice president of the National Indian Social Workers Association of Portland, Oregon. Ms. Orrantia is executive direction of the Indian Child and Family Services Consortium in Escondido, California.

We will proceed in the order in which you are listed on the witness list. Ms. Lui, we will begin with you.

STATEMENT OF VIOLET A.P. LUI, ATTORNEY, THE NAVAJO NATION, DEPARTMENT OF JUSTICE, WINDOW ROCK, AZ

Ms. LUI. Thank you, Senator Evans.

I am pleased to be afforded the opportunity to appear on behalf of the Navajo Nation. I am the attorney responsible for handling the Indian Child Welfare Act cases on behalf of the Navajo Nation.

There have been references made to a case that many of you already know, the *Keetso* case. You have already heard about, I am sure, another case that was litigated over 1 year ago, and that involved Jeremiah Holloway, also known as Michael Carter.

In listening to the testimony given today, I was struck by the presence of persons not specifically named nor dwelled upon. There were speakers here who were quite eloquent in addressing the rights of an Indian mother to privacy and confidentiality. I want to assure the committee that the Navajo Nation has a very strong concern about the rights of a young Navajo mother contemplating placement of her child.

But I do have to comment that the eloquence concerning the rights of the child that I heard from various speakers seemed to be motivated by a very strong concern over that unemphasized element, and that is the needs of parents wanting to adopt children. They seem to be a strong element here today.

Statements in terms of the best interests of the child have also been made with regard to what is American, what should be nonracist. These statements I take to be echoes but very foreboding echoes of a theme that has been present in the area of Indian law, and that is Indians should be liberated from its special relationship with the Federal Government.

It is our position that the Indian Child Welfare Act, as it exists and as it is proposed to be amended, strengthens Indian children, strengthens Indian parents, strengthens this society. It is an unusual situation in this world that the United States of America has an explicit and historically enforced relationship with its native people.

It is uncomfortable for other Americans to contemplate this relationship from time to time, and some of that discomfort was apparent in the comments today. There are times when the existence of Indian people, their wishes to remain Indian people, are inconvenient for other American citizens.

I do not use that term lightly. I do not mean to denigrate the desire of people out there for children. But as Mr. Ligtenberg expressed, it is not the duty of Indian people to provide children for those who desire to have children.

I note the statistic offered by Mr. Flint in his comments that their finding is that 80 percent of persons they counsel now will decide to keep their children. Look at that statistic. Fewer children are available. The pressure is there even for these well meaning people who see themselves as a helping force to place children. There is a pressure there to place children, to make them available.

So, when we come to issues such as Senator Evans comment, there is a State requirement, is there not, for you in your confidential interaction with the young mother to involve the State to an extent, it seems to me that it is just a small step and not a very intrusive one to make the involvement of the tribal government also a basic, natural—natural because it will be law—requirement.

There is an assumption that notice to the tribe is a breach of confidentiality and privacy. That is an assumption that is not necessarily a given if notice is required to the tribe.

The Navajo Nation feels very strongly that these amendments, particularly where the tribal involvement will be required in voluntary proceedings, that these amendments are necessary. The *Keetso* case was a very good example of the fact that we did not receive notice early on about the child. The child was born July 20, 1987. We did not receive any indication that an adoption plan was being considered until November 1987. As soon as we did, we began to take action to look into the case.

We did so quietly and sensitively. We did not litigate the case in the newspapers and never have. That is not the way we approach these cases.

We learned well after matters had proceeded in the *Keetso* case that the family involved had known at least as of May 5, 1987 before the child was born that the child was domiciled on the reservation as a matter of law, and their efforts to adopt her in California were not legal. We learned this through a tape, a copy of which we intend to submit for the record, that was provided to us by a Bay Area Indian group in which Mrs. Pitts was in the audience of a talk show, and the talk show host included Mrs. Carter of the Utah family that attempted to adopt the young Navajo boy and her attorney.

The question was posed by Mrs. Pitts: we are flying out a young Navajo girl from the reservation. She is going to live with us and have her child. We intend to adopt the child. Can they—I assume she meant the tribe—take the child from us?

The Carters' lawyer responded, having gone through the experience himself in the case and litigating that specific issue, that the domicile of that young mother is the reservation. The domicile of that child will be the reservation. What you are doing is not legal.

So, we were faced with a situation that here were people who had pretty good sound information on what should be done and, yet, we were faced with having to pursue our rights under the law, having to go to California into the California court system—which we have no problems with doing, of course, because the law is there, it is clear, and there are processes—having to argue to the court what the law says and what should be done and having to wait.

Months tick. Months go by. We get our decision, and that somehow didn't seem to help. We were met with resistance all the way.

The final outcome was that we went through the Navajo Children's Court with what I think are very good results. As the chairman of the Navajo Nation has described in a letter that Senator McCain is to submit for the record, I understand, the outcome protected the child's Indian heritage. The outcome protected the mother's interests. The outcome protected the extended Navajo family's interests in that child, and the outcome protected Mr. and Mrs. Pitts.

There has been criticism for what all happened, but when it comes down to what I now know, what we had to find out subsequent to all of this, it is that the very people who wanted the child had the information to do the correct thing and yet did not.

In the *Holloway* case, we faced a similar situation. The law was there. Yet, there was still resistance.

What it comes down to is we need the act to be strengthened. We need the specific notice requirements.

Now, in the discussion today regarding the confidentiality problems, the privacy concerns, we take that very seriously ourselves, and we do intend to submit further suggestions on that. However, that is not an area in which we would say that we need to back away from notice to the tribe, the involvement of the tribe.

There may be individual cases with particular tribes where some other avenue needs to be worked out, but that does not mean that the general rule should be so altered that the tribe is not given notice. That is like throwing the baby out with the bath water, and there is no need for that. There is no call for that.

In sum, Mr. Chairman, I want to commend the fact that this bill has been offered which expresses the desire not to cut back on the protections of this act but to expand it to create new avenues so that Indian children can be helped to retain their Indianness and so that in any consideration in any court of this land, when you are dealing with an Indian child, that there will be almost an automatic consideration that part of the best interests include the fact that they are Indian.

Thank you.

[Articles submitted by Ms. Lui appears in appendix.]

Senator EVANS. Thank you very much.

Ms. Blanchard.

STATEMENT OF EVELYN BLANCHARD, VICE PRESIDENT, NATIONAL INDIAN SOCIAL WORKERS ASSOCIATION, PORTLAND, OR

Ms. **Blanchard**. Good morning. Thank you for the invitation to appear here.

My name is Evelyn Blanchard. I am vice president of the National Indian Social Workers Association, and I am employed by tribes and Indian families throughout the United States and Canada as an expert witness in their efforts to regain custody of their children. I was employed by Jeremiah Holloway's mother in the case to which Ms. Lui referred on the Navajo.

I have a written statement which I will submit to you, but I would like to cover some other areas in my oral discussion. Before that, I would like to call to people's attention that while there are not tribal leaders and tribal officials on many of these panels, it is my experience that these individuals and these governments all are very concerned about the further development of this law and support the strengthening of it.

In addition to the position of U.S. tribal leaders, we also have in the room today with us tribal leadership from Canada. We have with us Mr. Phil Fontaine who is vice chief of the Assembly of First Nations in Ottawa, and also is vice chief from Manitoba. We have Chief Jim Bear from the Broken Head Indian Reserve in Manitoba and David Iftody, the Child Welfare Advisor for the Assembly of First Nations in Ottawa.

We also have Joan Glode who is the first director of the Micmac Family and Children's Services of Nova Scotia. The Micmacs in just the last several years have embarked upon a very ambitious educational effort among their people and have taken control of the family and children's services from the Children's Aid Society in Nova Scotia. Currently, Joan is working to get a Micmac child returned from California where the child remains in the custody of the State and for whom the Micmacs did not receive notice until some 5 months later.

I would like to first of all address some of Mr. Swimmer's comments regarding the racist characteristics of the Indian Child Welfare Act and, particularly, these amendments and his questions about its constitutional status.

I have had the opportunity to work with this law since it was being thought about and drafted. So, I do have a long history with the act. It is my memory that these constitutional issues were raised initially by the Department of Justice before the Indian Child Welfare Act was passed in 1978 and that Congress decided they were without merit.

So, I don't see the need to continue to bring up these constitutional issues, especially when they are only viewed from the non-Indian perspective and where the concern about them comes from a strong emphasis of private, independent adoption efforts.

As regards the racist characteristics of the act and the amendments, those are difficult to understand. For example, 2 years ago in the State of Oregon, we were able to get enacted a State law entitled "The Southeast Asian Refugee Child Welfare Act," because it was found in our practice of children's services that the Southeast

Asian people were in fact experiencing identical practices experienced by Indian families which brought about the passage of the Indian Child Welfare Act.

In the State of Minnesota, a State law exists which recognizes the ethnic backgrounds of all peoples, not just Indians, not just Southeast Asians, but Italians, Germans, Danes, and Norwegians. Respect is given to the plurality of people and its contribution to this Nation. So, I fail to understand these racist claims.

Also, I think there has been little doubt in anyone's mind since the passage of this act and even before that the Bureau has always been seen as the agency that has responsibility for monitoring the act. In fact, it issued guidelines to State courts. That establishes some status.

Unfortunately, the Bureau has not made real attempts in the past 10 years to address this problem of monitoring. I think that it contributes directly and greatly to the many misunderstandings that have developed with regard to protections that the act provides to Indian people, tribes, and children.

Sometimes they say if you are not paranoid, you are crazy, and this is one of the times where I think maybe that is so. Even yet in 1988, no effort is being made.

Mr. Swimmer indicated that he thought that the country was in about 80 to 90 percent compliance. Well, in my travels throughout the United States, I can tell you that that is hard to believe. I don't see it.

Recently, the State of Washington and the State of Oregon got together. There were representatives of tribes, schools of social work, State children's services divisions, IHS and other Indian organizations. They got together and proposed a very simple monitoring instrument that we could test out using students from both of the schools, the School of Social Work at UW and PSU in Portland. We figured that, at the most, this would probably cost about $47,000 and maybe less.

I carried this to the Bureau of Indian Affairs offices here in Washington, DC, and the idea was totally rejected in spite of the fact that we had sent out a copy of our proposal and a description of our effort to all the States in the Union. We received 22 responses from States indicating that they had no means to monitor. Some had made meager attempts, but these were no good, and they were very anxious to be able to try out an instrument like this.

We were told that the effort that the Bureau was making is a study that is being conducted by an organization or a corporation called CSF. I had an opportunity to look at the materials developed for that study. There are 11 different questionnaires. I didn't count, but at least a third to one-half of the questions that are posed in these 11 different questionnaires are open-ended questions.

I don't know who the people are who are going to be asking these questions of judges, case workers, or whomever throughout the country. However, I can tell you from my practice that they need to be people who are very knowledgeable about the field. Otherwise, the kind of data that will result from this effort may be useless. If it is not useless, it is going to be extremely difficult to compile which raises a lot of questions about the validity of the effort.

Efforts are being made by States to, for example, monitor private agencies. I can speak for both the State of Washington and the State of Oregon, because I am very closely tied to child welfare services there. I have served for many years on the Children's Services Division Advisory Committee of the State of Oregon, so I am very close to the practice, and we also work very closely with the people in the State of Washington. So, I know that at least in these two States, specific efforts are being made to gain some control over private agencies to assist them to adhere to the requirements of the law.

Many objections have been raised with regard to these amendments as they pertain to privacy and individual freedom and confidentiality. It has been said that our basic rights are being taken away.

First of all, I think we need to keep in mind that many of these voluntary adoptions are, in fact, not voluntary but, frankly, involuntary. In the case of Jeremiah Holloway, as you become familiar with the history of that case, the situation of that mother, and the options that were placed before her, and the people who really held the power in that young woman's life—at 18 years old, had not completed high school, no training for employment, a broken love affair—I mean, this is a typical 18-year-old who gets pregnant. She is a very confused person.

In my opinion, and I am a social worker and have been working in the field for 26 years in child welfare services; those circumstances certainly do not contribute to a thoughtful, voluntary act on the part of these mothers. I would not describe Cecelia Holloway's relinquishment of her child through voluntary adoption consent as voluntary. It simply isn't.

In fact, it has long been recognized in the field of social work, not just in work with Indians, that it is inappropriate to press the birth mother with the problem of relinquishment during her pregnancy. In fact, the outcomes for the mother's health, both physical and emotional, are reduced when this individual is required to experience such stress.

It is very difficult, I know, for many non-Indian people to understand why it is that it is necessary that notice of birth be given to the tribe even over the mother's objection. And I think that if we look at the law again and contemplate the placement preference, I think we will see that the Congress in 1978 tried very hard to provide the kinds of protections that the tribes really saw that they needed.

As was explained to Congress repeatedly when the law was being developed, Indian people have two relational systems. They have a biological relational system, and they have a clan or band relational system.

It is the convergence, if you will, of these two systems in tribal society that creates the fabric of tribal life. And each of us as an Indian person has a very specific place in the fabric. We have very specific responsibilities within the fabric. Those responsibilities are our rights, individual rights. And even our mother has no right to deny us those rights.

We want that. We know ourselves, and that is necessary for these children.

Unfortunately, the resistance to an understanding of our philosophy remains strong. In fact, as we heard today, frankly, corrupted. What it appeared to me that some people were saying today was that not only do we relinquish some of these protections that were instituted ten years ago, but also nobody wants to go back to a reservation, nobody really wants to be an Indian. These children who have been separated and whose parents have been separated from reservations for years have no interest or affiliation or concern or respect for their tribal knowledge.

That simply is not the case. A lot of the work that I do is, in fact, in the State of California with Indian children who are third generation Californians. Their grandparents were the ones who were relocated to the Bay Area by the Bureau of Indian Affairs for either training or employment. We are now working with the grandchildren.

I can tell you from my own experience that the ties between these children and their relatives in the Pueblos and in other tribal areas throughout the country is extremely strong. And when these children return, they immediately get the benefit of the resources of their tribes and communities. They are named. They are accepted into a clan. They are taught how to hunt. They are taught all the things that they need to do as part of their lives.

I had hoped that one young woman with whom I am working right now from Canada would be able to accompany me, because I think that she would be able to demonstrate to you the necessity for the strengthening of the law through these amendments.

The recommendations that are being made to improve the law are ones that have arisen out of the practice of both law and social work in these past ten years. This particular young woman was adopted out of the Province of Saskatchewan through Lutheran Family Services to a family in York, Pennsylvania. At least from what I can tell from what information I have received, there was no post-adoptive work and no follow-up.

This child was physically, sexually, and emotionally abused by both adoptive parents. She was adopted when she was seven. She ran away from them finally for the last time when she was thirteen years old.

From then on, she lived in about 22 different foster homes, psychiatric wards, and group homes. You name it, she was there.

She is a classic case of abuse. She entered into prostitution. She became absolutely obese. She is completely ashamed of herself. It is hard for her to have any kind of contact with anybody. She isolates herself. She is only one example.

I have helped work on a campaign for a young man sitting right now in Stonybrook Prison in Manitoba. Cameron Curley was featured on "60 Minutes" several years ago. This child also was brought into this country, placed with a man from Wichita, Kansas who drove to Brandon, Manitoba to pick him up. No study, nothing.

Mr. Curley turned out to be a pedophile, and Cameron suffered, was shamed, beaten, physically and sexually abused under this man's care until he was probably about 14 or 15 and then he, too, began to run away. When he was about 19 years old, he returned to his adoptive home and slew his adoptive father.

These are only two cases, and these are Canadian cases, and I wanted to highlight those because the Canadians are very interested, too, in these amendments. These two cases mirror the experience of hundreds of Indian children from the U.S. who have been placed with non-Indian families for adoption.

Unfortunately, it seems that we are yet meeting the needs of the non-Indian adoption market as opposed to the best interests of the Indian child, and the numbers of disruptions that come to our attention certainly would support that position.

Before going down to testify in the *Holloway* case on the Navajo, I called Cecelia Sudia who works with the Children's Bureau and who has responsibility for oversight of Indian programs. I wanted to know, because I thought I might be asked on the stand, how many adoption disruptions are there where Indian children are involved.

She told me that she had absolutely no clue, because they had no figures on how many Indian children had been adopted. Now, that sort of flies in the face of Mr. Swimmer's 80 and 90 percent.

I know from just working with the Children's Services Division in the State of Oregon that we are not able to report that, because, frankly, our information systems are not set up sufficiently to be able to do that. The Indian Child Welfare Act liaison who works in the central office in Salem has been keeping pencil notes, but it is not yet a part of the information system, and I don't believe it is in the State of Washington, either.

I might call to your attention——

Senator EVANS. I wonder if you might summarize at this point. We still have one more witness, and we are running out of time.

Ms. BLANCHARD. All right. I might just let you know, though, that the States of Kansas, Washington, and Michigan, through tribal-State agreements, are reporting voluntary placements. The States of Minnesota and Oklahoma, through their own State laws, are reporting voluntary placements.

So, I don't see that some of these problems that have been brought forth are insurmountable.

Thank you.

[Prepared statement of Ms. Blanchard appears in appendix.]

Senator EVANS. Thank you very much.

Let's turn to our final witness, Ms. Margaret Rose Orrantia.

STATEMENT OF ROSE MARGARET ORRANTIA, EXECUTIVE DIRECTOR, INDIAN CHILD AND FAMILY SERVICES CONSORTIUM, ESCONDIDO, CA

Ms. ORRANTIA. Thank you, Mr. Chairman.

I am Rose Margaret Orrantia from Indian Child and Family Services. We are based out of Escondido, CA. The area that we serve is San Diego County and Riverside County.

We are title II grantees. We have recently been notified that we will be funded for next year. That means that this will be our ninth consecutive year of funding under the title II grants.

I would like to say that in the nine years that the program has existed, I think that we can show a model for the Indian Child Welfare Act being implemented. We can show you a program that has a reputation for excellence, and with limited resources, we are able to ensure that in those counties where we are working, the act is implemented. It can happen if the resources are made available.

I do not have written testimony to submit, because I was using the time prior to coming here to submit an appeal to the Bureau of Indian Affairs. We were notified that we will be funded, but the level of funding is ludicrous. There is no way that the amount we were given will allow us to provide the services that are needed in this area.

For the gentleman from Beverly Hills in California that testified prior to us, I would like to say that the State of California very definitely does have an indigenous population of Indian peoples. They are not all from out of State. I think he needs to do a little homework.

Not only are there quite a number of indigenous peoples, part of the problem with the State of California is that because these indigenous peoples were small bands of Indians and because they did not have large land bases such as the Navajos have or other tribes, it is an area that is really beautifully set up to divide and conquer. And in the State of California, that is precisely what happens.

I would also like to say that the State of California, by its own survey which was conducted in 1983 and 1984, has found itself to be 85 to 95 percent out of compliance with the Indian Child Welfare Act. The suggestion that States be allowed to monitor their own compliance, to me, is like putting the wolf in as the shepherd of the flock. I sincerely doubt that you are going to have any kind of compliance.

In the counties that we serve, I have a current case load for April of 1988. In San Diego County, we have 51 children currently in placement. In Riverside County, we have 62 for a total of 113 children in those two counties. All but 8 of those children are in either a relative placement, in a tribal licensed home, or in a licensed Indian home.

We actively recruit Indian homes. We have enough Indian homes for the children that are referred to us. Any of those counties or any of those States where the comment is made that there are no homes available, I think that if a little research is done, you will find that there have been no active efforts made to recruit Indian homes.

Because of the difficulties that we were having with the State of California in their persistent and continuing lack of cooperation to place Indian children in Indian homes and saying that they couldn't be placed because there were no Indian homes and when those counties were doing the recruiting, there were no Indian homes, because they weren't recruiting them.

So, I can prove to you that those homes are there. They are not only Indian homes; they are good Indian homes. They are good Indian homes by anybody's standards.

I keep having this feeling that the majority population seems to feel that you have to lower standards somehow to have a good Indian home. That is not the case.

All of our homes are licensed. We use the State of California standards which we adapt, because we have that ability and that prerogative to do it because the act gives us that ability and prerogative, and our homes are excellent homes. We are monitored on a yearly basis. They come out and evaluate our homes, our files, and they go visit our homes. There has never in the history of our being licensed been any gross deficiencies found in any of our homes.

Then, just to further provide services, we found it necessary to apply to become licensed as a State adoption agency, because for the children who were in the case load, once parental rights were terminated and it went to adoptions, there was no way for us to have access or to have input as to where these children were going to be placed.

We began to find that, in most cases, the children were being placed in non-Indian homes and, once again, the same excuse is used, that there are no adoptive Indian homes. Once again, I will give you the same reason: they don't recruit them.

So, it is essential that there be programs such as ours that are out there, that are actively recruiting, that are doing case management, that are ensuring that the children are being placed in Indian homes, and that the homes are being monitored, which is what we do.

Those are some general comments that I wanted to make in reference to why Indian children don't get placed in Indian homes.

I have some further comments that I wanted to make.

I also would like to state that this past year, our organization also did pick up the Los Angeles project which was defunded by the Bureau of Indian Affairs, and we picked it up on monies that were given to us by the State of California. It was a one-time only appropriation.

If you will look at that case load—and I will submit the case load profiles to you so that you can have them — we asked for a printout of the case load for the county of Los Angeles, and they identified 200 Indian children in their case load. Yet, only 35 were referred to us.

Of the 35 that were referred to us, only 5 of those children are in Indian homes. All the rest are in non-Indian placements. Several of those cases are now at the point where there has been termination of parental rights. I believe the *Micmac* case is one of them.

Those children are in non-Indian homes, and in our experience, what happens is that the court will say that they find good cause to the contrary to place the children in Indian homes because they have already been in non-Indian homes for anywhere from months to years and that it would be detrimental to the children to be removed and placed in Indian homes.

Some of the other issues I wanted to address have been addressed in some part by some of the other people who have testified. The whole issue having to do with training— there is not adequate training. I guess I can only speak for California. There is not adequate training for the county social workers. Most of them are not familiar with the act. It has been in existence for ten years. Yet, to this day, they will say well, I didn't know there was such a thing as an Indian Child Welfare Act.

The system for notifying tribes that the State has put into effect is cumbersome. When a child is going to be adopted, county workers are instructed to fill out a very lengthy and complicated form which they then send to the Bureau of Indian Affairs in Sacramento, and the Bureau of Indian Affairs has stated that they are something like three years behind in processing them which means that if a child comes into the case load today, it will be three years before there is any kind of permanency planning for that child.

That is the sort of situation that, as a person who administers a program in the State of California, those are the kinds of situations that we have to deal with.

The issue of notifying tribes and not getting a response—in our experience, we do notify tribes when children come into the case load that are identified as being from out of State. We personally notify the tribes. The response is timely, and I can't understand why people say that the tribes don't respond, because they do, and they respond in a timely fashion.

Once again, I think that the system that has been put into effect for doing the notifications is unclear, and it is cumbersome, and it is another layer of bureaucracy that the State has come up with not to help implement the act but, I believe, to put up another barrier for it to be implemented.

As far as the reunification—the services that we provide are directed towards reunifying families. In the State in which we work, there are no special funds, no special programs, which provide monies for programs such as ours to provide those services. So, we do it with the small and limited sums that we get through the Title II grants.

We are in a position to see successes, and we see successes. Families are reunified. We are convinced that when children are removed from their families, that perhaps for some of these families, it is the first time that inappropriate behaviors have had a direct consequence, that is, the child was actually removed.

We also experience that those families at that particular moment are vulnerable to change and that many of those families will avail themselves of any services that are provided in order for them to get their children back. They do, and children are reunified with their families, and children do stay with their families, and those families are intact.

Another barrier, of course, that I have alluded to is insufficient funding. Every year, I spend three months of the year writing the proposal, waiting to see if the proposal is going to be funded, and then appealing the proposal. So, that is three months that could be used to work with children that I spend making sure that the project is funded.

I believe that there has to be a better way, a different way to allocate those funds. I wish I had a magic wand and I could say what that way should be. I don't. I think that perhaps having more funds available would make the process more accessible to more projects.

Once again, I can only speak for the State of California which has, by the 1980 census, in excess of 250,000 American Indian peoples, and there are only three projects presently funded in the State of California to serve all those people. I think that you will see that is totally inadequate and that many people are going unserved.

The other issue has also been addressed, and that is the issue of how one reports whether States are in compliance. A recommendation I would make would be that those statistics be gathered locally, that they be maintained by the State, and that they go through a national clearinghouse, and that some standardization of how case loads are reported be instituted to be carried out—I guess I will say the Bureau right now, because that is who is doing it—and just ensure that there are statistics being gathered and there is a place where they all go and where the Congress can have access to them.

I believe that if the Congress had access to the number of children that are actually being served and to the successes that are happening that more funds would be made available for projects to continue.

The last area that I would like to address is the area of how the projects are funded. I believe that the people who are selected to do the reading—and I am not impugning their credentials. I am simply saying that, oftentimes, they are called in from areas to read proposals for an area with which they are not familiar.

Because they are not familiar with the area, they do not know the mechanics of trying to implement a project. In the State of California, although some people seem to think that there are no Indians, there definitely are, and they are in extremely rural areas. We frequently have to use four-wheel vehicles to get back there. All of southern California is not highways and not freeways, and it is not all urban.

I believe that many of the readers are not familiar, first of all, with the geographic areas that must be covered and, second of all, with the cost of living that is involved in trying to run a program in California.

Additionally, I would like to state that although there was never an open comment made that Indian people are not qualified and that Indian people cannot run projects, I can assure you that there are many qualified Indian people. All of our first line staff are qualified Indian people with appropriate degrees, and I know that they are out there, because I hire them.

I would also like to ask that I be allowed to submit written testimony.

Senator EVANS. We will certainly allow that. In fact, we will keep the record open for 10 days to allow any additional testimony from those who have appeared before us or others.

[The prepared statement of Ms. Orrantia appears in appendix.]

Senator EVANS. Thank you very much.

Let me turn first to Ms. Lui. One of the concerns expressed by some who testified this morning was on the additional identification of what constitutes an Indian. Do you think that is a definition that is difficult to identify or is beyond what is appropriate? The additional language is in 5(c) which says, in essence, "is of Indian descent and is considered by an Indian tribe to be part of its community."

There have been assertions by some, of course, that this means someone of some very small fraction blood could be asserted by a tribe to be part of its membership and that there are no standards on which to really determine Indian descent.

Ms. LUI. Senator, the language you refer to—I can see the basis for the concern, and it may well be that some fine tuning of the language would help. However, it is our view that it would be a workable—the basic approach is a workable approach.

Ms. Blanchard just commented to me that it is language straight out of the State of Washington's codes.

However, I can see the area of their concern, the concern for people who are just minimally and under no one's statutes or codes of any tribe would they qualify for membership or probably even be considered by the Indian tribe to be part of its community. So, it is my opinion that although some consideration should be given to the comment, that doesn't mean to throw away that provision.

Senator EVANS. Let me ask one further question. The current law, in essence, says that if you are a member of an Indian tribe or are eligible for membership in an Indian tribe. Is that sufficient, or are there cases where someone is of significant Indian descent but from whatever the requirements are may not be eligible for tribal membership?

Ms. LUI. There are cases that do arise. You would think that the first two, a and b, would cover, but there are situations that arise where there is a child.

For example, there was a child born in Gallup. For reasons beyond everyone else's control, no one could ever establish who gave birth to that child. The birth mother was simply not there when the child was discovered hours later. That is a child whom everyone knew was probably Navajo, but there was no way to establish that.

That child in the area would be a member of the Indian community in everything but the card.

Senator EVANS. In a fundamental sense—I will ask Ms. Blanchard this question—are we in a situation where we essentially have a buyer's market in adoptions? Are there a lot more parents who seek children than there are children available?

Ms. BLANCHARD. Yes; that is the case. It has been so. We have begun to feel the strain of the market since about the 1930's. It has been that long.

Of course, part of our difficulty, speaking from the standpoint of Indians and our role in the market, is that social services are a very recent phenomenon in Indian country, really, probably not even 20 years old. Before the passage of the Indian Child Welfare Act when we could hope to get some of these jurisdictional things straightened out, all across the country, 280 or not, the BIA would intervene in family life, arrange through the various States for the placement of those children, and the Bureau would support those placements.

In the 1950's, the Bureau of Indian Affairs entered into a direct agreement with Child Welfare League of America to supply babies for the adoption market.

So, I don't know how many more years it will take for us to bring some regularity to this situation, but it still is a very serious problem, and the fact that fewer and fewer mothers of any race or ethnic group are choosing to relinquish their children for adoption is a major factor in it.

Senator EVANS. Is there a concern that even with the current Indian Child Welfare Act, a concern by some that these additions which might require more notification and participation by Indian tribes and Indian tribal courts simply interfere with their business, the business being seeking out and getting paid, in essence, for ensuring that there are adoptions?

Ms. BLANCHARD. Yes; it does, it will. We see from our experience that many of these private independent arrangements are extremely poor and, in fact, dangerous for all the people involved. I mean, they become tragedies as the cases that Ms. Lui cited.

This act is only 10 years old. It came about as the result of Government action and inaction over an extensive period of time, and it is a very important piece of social legislation. I think it requires the refinements that have been proposed, and I think it requires our diligence and our patience and so forth to bring about these changes in the thinking of our society.

In my opinion, I think it is a tragedy that we even ever had to pass an Indian Child Welfare Act.

Senator EVANS. Ms. Orrantia, your record in southern California sounds like an exemplary one. If I wrote the figures down correctly, out of 152 adoptions, all but 8 were adopted into Indian families. Is that correct?

Ms. ORRANTIA. That was foster care placements.

Senator EVANS. Foster care placements?

Ms. ORRANTIA. Yes.

Senator EVANS. What about more permanent adoptions? Are you finding the same potential for Indian children to be adopted into Indian families?

Ms. ORRANTIA. We just became licensed in April, and we have potentially 8 children right now who will be adopted, and we do have Indian homes that they can go to.

Senator EVANS. So, you believe that both for foster care and for permanent adoptions there are Indian families available?

Ms. ORRANTIA. Indian families that are available, that are appropriate, and that are willing.

Senator EVANS. What about the assertion that most of those of Indian background in California come from somewhere else? Of course, I suppose that is true of everybody in California. They all come from somewhere else, but what about that as an assertion and what influence does that have on the adoptions and on how things might be operated under this proposed bill?

Ms. ORRANTIA. The comment that there are a large number of Indian people from out of State is an accurate statement. I think historically you need to look at the reason why they are there.

For many of them, it wasn't exactly their choice. The relocation program brought people to the Bay Area, to Los Angeles which is one of the large areas, and over a period of 20 or 30 years, some of those people have moved down into San Diego and that area. So, we also come into contact with people who are there as a result of the relocation.

Senator EVANS. So, you are saying that that was specific policies of the Federal Government at the time?

Ms. ORRANTIA. Exactly.

Senator EVANS. In relocation?

Ms. ORRANTIA. Exactly, and then to say that simply because an act of the government 30 years ago removed somebody from the reservation terminates their right to have their children protected is ridiculous.

Senator EVANS. I presume that there are also a number attracted to California just individually or for other reasons as well as the more governmental encouraged program of relocation.

Ms. ORRANTIA. People would come to California for the purpose of finding employment.

Senator EVANS. Sure.

Ms. ORRANTIA. Which everybody knows doesn't exist on a lot of reservations. There is no way to maintain your children in a fashion that is acceptable to the majority population. So, you go looking for it somewhere else.

In most cases, that requires that you leave the reservation. Also, in my experience with people who come to urban areas for expressly that purpose, they maintain their "homes" on the reservation with the intention that at the time they retire, they will return there.

Senator EVANS. You say when you begin the adoption procedures, there are Indian families available, willing, able, and qualified. To what degree can you match children with Indian parents of the same tribe or the same heritage? I presume there are some quite considerable differences between tribes and their own heritage, language, customs, traditions.

Ms. ORRANTIA. I believe we have to make a distinction of whether we are speaking of adoptions in terms of children who are adopted because parental rights have been terminated because of lack of reunification of the family. In those cases, we are in almost all cases dealing with children who are older. Usually, the youngest will be 18 months, but usually they are anywhere from 18 months to 5, 6, or 7 years. It depends on how long they have been in the system.

Now, for the majority of those children, if we are doing out job, they are in a relative placement. Then, of course, if the child is going to be adopted, then those relatives are the ones who adopt the child.

Senator EVANS. Sure.

Ms. ORRANTIA. There are some cases where, for whatever reason, there isn't an appropriate family member. Then, that child, once again if we are doing our job, is in either a tribal home or in a licensed Indian home. Once again, those foster parents have the first opportunity to adopt that child.

Now, if we are speaking of relinquishments, that is a whole different ball game.

Senator EVANS. You mentioned in the letter that you submitted to me which, if it has not been, ought to be made part of the record, an interesting statement on page 2 where you said:

> The current literature in psychology shows that Indian children who are adopted by non-Indians suffer greater problems as they reach adolescence. They have higher rates of suicide, already four times higher in the Indian population than in the general population, runaway, substance abuse, and violent deaths. This is not a good legacy for any government to leave for any of its people.

Do you have more specific references to that literature and studies, and how extensive and how all-encompassing are those studies that provide that kind of result?

Ms. **Orrantia**. The information that I was referring to specifically deals with Dr. Samuel Roll who has, I believe, provided testimony in, I believe, the Holloway case, and I know that that testimony is available.

Senator **Evans**. Is that from research that he had done or just from his testimony referring to other research? I want to get at the basic background of this information to determine how it was compiled and to what degree we can rely on its validity.

Ms. **Blanchard**. Senator, the basis for that information comes from studies done by Dr. Joseph Westermeyer in Minneapolis who continues to do some work, Dr. Irving Berlin of the Department of Child Psychiatry at the University of New Mexico, and also Dr. Martin Topper, a psychiatric anthropologist who was working on the Navajo and left recently. I think he is here in this area someplace working for one of the Federal agencies here in Capitol area.

Senator **Evans**. OK. I do have copies of the report from Dr. Berlin and from Dr. Westermeyer which I will ask to have be made part of the record. If you could give us a more explicit reference to other studies along this same line, then we will make them part of the record as well.

Ms. **Blanchard**. All right.

[Materials referred to appear in appendix.]

Senator **Evans**. Ms. Blanchard, you mention the project in Oregon and Washington which was rejected by the Bureau of Indian Affairs. Do you know why explicitly or what reason explicitly that was given for that rejection?

Ms. **Blanchard**. Well, yes. They didn't like it and were angry at us. That is essentially it, unfortunately.

Senator **Evans**. I am sure they weren't blunt enough to say we are not going to approve this because we are angry at you.

Ms. **Blanchard**. No, they said they were not interested in it, and they were angry when they said it.

Senator **Evans**. Okay.

Ms. **Blanchard**. So, I mean——

Senator **Evans**. But did they say they were not interested in it because they didn't need the information or because it wasn't important or what?

Ms. **Blanchard**. They think they are going to get this information out of the study that they funded, but I just don't see how they are going to get it.

Then the State of Washington, Children's Services Division for a few minutes refused to provide the Bureau or the Children's Bureau with some figures that are, frankly, voluntary. There is no Federal requirement that the States provide this information, and I was told directly that the Bureau considered it an affront that I should appear with this proposal when the State of Washington had denied them the information they requested, and that was also part of what stimulated their anger and rejection.

Senator **Evans**. We will look into that. I have a somewhat special interest in——

Ms. **Blanchard.** Yes, well, in fact, we are going forward with it in a very small way. The School of Social Work at the University of Washington has a doctoral student this summer, an Indian student who is going to be able to devote some time to this, and Maria Tenorio, the Indian Child Welfare Act liaison in Oregon, has available to her this summer a student who is subsidized.

So, we are going to push anyway. I think it is simple, it is clear, and it looks like it will work.

Senator **Evans.** Well, we will certainly look into that and ask the Bureau of Indian Affairs if they can explicitly show us where they have, through this study which is now in draft report form, accomplished the same purpose and gotten the same information. If they have not, then the next question will be why reject a relatively inexpensive opportunity to get that kind of information.

Ms. **Blanchard.** We will be glad to send a copy of the proposal to your office.

Senator **Evans.** Thank you very much.

We thank all of you for your testimony and all those who have patiently sat through this morning's hearing. We are dealing with a very important, very difficult act. Any time any of us attempt to deal with the future of children, we are dealing with our own destinies in many respects, and the challenge is the trusteeship we have in this generation to try to give better opportunity and better support to the next generation.

I am sure that everyone who has testified and everyone who is involved has that in mind. That there are differences in approach and differences in how we feel we might achieve that goal is understandable.

I thank all of you for testifying. It has been very helpful. I am sure that the committee will now proceed with its markup of this legislation, keeping in mind the very important testimony which has been given to us.

Thank you very much.

The hearing is adjourned.

[Prepared statement of Senator DeConcini and materials submitted by the National Committee for Adoption appear in appendix.]

[Whereupon, at 1:57 p.m., the committee adjourned, to reconvene subject to the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

STATEMENT OF ROSS O. SWIMMER, ASSISTANT SECRETARY-INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE, ON S. 1976, A BILL "TO AMEND THE INDIAN CHILD WELFARE ACT AND FOR OTHER PURPOSES."

May 11, 1988

Mr. Chairman and members of the Committee, I am pleased to be here today to discuss S. 1976, a bill to amend the Indian Child Welfare Act (ICWA).

We are strongly opposed to S. 1976 and will submit a substitute bill in the near future that will address our concerns discussed here today.

The ICWA is fraught with complicated issues. We must struggle with the rights of the child, who must be placed in a foster or adoptive home, to have a secure home as quickly as possible, the rights of parents to choose to place a child for adoption and to have some say in that placement, and the rights of a tribal court to exert jurisdiction over tribal members. We believe that the the best interest of the child and the appropriateness of ICWA applying to a child should be continually kept in mind.

We do not believe that S. 1976 adequately addresses the consideration of the best interest of Indian children. Only once in the amendments is "the best interest of the child" specifically addressed. The premise of the Act is considered to be "The best interest of the Child". However, it does not acknowledge the child's right to a family or permanency.

S. 1976 loses sight of our goal of protecting the best interest of Indian children. Without going into a section-by-section discussion of the bill I would like to mention those areas we believe should be closely considered by the Committee and where we disagree with the intent of S. 1976.

1. Should Congress remove the right of Indian parents to voluntarily place a child with a non-Indian family?

In a voluntary placement the "best interest of the child" may very well be with the family chosen by the Indian parents. The individual rights of the parents must be considered and carefully weighed against the rights of the tribe to exert jurisdiction and consider a different placement.

2. Should Congress give a tribal court jurisdiction over an Indian person who has never lived within the jurisdiction of that court?

We do not believe that Indian parents and their children should have to return to the reservation of their tribe which is often in another state for a court proceeding concerning the child. Non-Indians are not required to do anything comparable. Again, the best interest of the child and the rights of the parents must be weighed against the rights of the tribe to exert jurisdiction.

3. Does Congress want to require "open adoptions" to the extent that the biological parents and their family would be allowed to visit the child even if the adoptive parents would not agree to such terms?

Such an arrangement may not always be in the best interest of the child and should be left to agreement between the biological parents and the adoptive parents. ICWA should not impose so many restrictions on non-Indian families that such families would no longer be available as possible resources.

4. Does Congress want to extend ICWA to Canadian Indians?

We do not believe this is appropriate and have consistently excluded Canadian Indians from policies affecting Indians of the United States.

5. Does Congress want to expand the definition of "Indian child" and "Indian tribe" far beyond the current definitions which center around membership and federal recognition?

The issue of tribal membership and cultural identity is a sensitive one. The courts have been clear about the rights of tribes to determine their membership. However, we must understand the complexity of the membership issue as it relates to ICWA. Out of some 500 tribes and Alaska Native villages there are approximately 300 that have some sort of membership or census roll.

S. 1976 expands the definition of Indian child far beyond the current definition which applies the Act to a child that is a tribal member or is eligible for membership and has a biological parent who is a member of the tribe. If a parent is not a member of a tribe, then would the child be raised with a tribal cultural identity? Should the tribe have exclusive jurisdiction over this child? Would it be in the best interest of this child to limit placement into an Indian home? We believe that the answer to these questions is probably no and ICWA should not apply to this child.

If, on the other hand, a child is to be placed for adoption and one or both parents is a member of a tribe and relates to the tribe in some way, then chances are that that child would be raised with some tribal identity and indeed the placement of this child by a tribal or state court in an Indian family (where one is available) may be in the best interest of the child.

We strongly oppose the expansion of the definition of Indian child and recommend that the definition should not only contain a membership requirement but also that the domicile of the birthparent or parents is in Indian country. If the family is not domiciled in Indian country we believe that the appropriate state court should have jurisdiction over the proceeding but that the priority list currently under ICWA for foster care and adoption placements should be followed unless the best interest of the child requires a different placement.

We estimate that implementation of S. 1976 would cost the BIA approximately $7 million. The cost to the states and individuals involved would certainly raise this figure substantially.

Mr. Chairman, we have serious concerns about these issues. As I stated earlier, we will be sending a draft bill to meet our concerns in the near future and ask that the Committee not act on S. 1976 until you can review our draft. I am certain that by working together we can agree on a bill that will address the most important issue - the "best interest of the Indian child."

This concludes my prepared statement, I will be happy to answer any questions you may have.

THE SECRETARY OF THE INTERIOR
WASHINGTON

May 11, 1988

Honorable Daniel K. Inouye
Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am extremely alarmed over the provisions of S. 1976, a bill to amend the Indian Child Welfare Act. My concerns are such that I have asked Assistant Secretary Swimmer to request permission of the Chairman to incorporate this letter in the record when he testifies on the bill.

The three branches of the Government of the United States frequently are called upon to deal with the complex issues which arise when Indian tribes, states and the federal government each seek to exercise sovereignty over matters or persons of interest to them. The reasonable balancing of interests between such entities, always bearing in mind what is in the best interests of Indians as individual human beings, is not always easy.

I believe strongly that it is clear that this bill fails the test of reasonable balance. It would skew the balance in a manner which is wholly unacceptable to the Department of the Interior and should be unacceptable to any persons who are concerned about human rights issues, especially including the human rights of children.

Although there are multiple flaws in the bill, we call your attention to three, fundamental objections:

First. The bill is anathema to the salutary constitutional principle that legislation cannot stand if it makes classifications and distinctions based on race. If enacted, this bill would subject certain Indian children to the claim of jurisdiction of an Indian tribe *solely* by reason of the children's race. For example, under Section 101(b) of the bill, if a tribe seeks transfer of a child custody or adoption case from state court to the tribe, the parents' objection to such transfer will be unavailing unless the objection is "determined to be consistent with the best interests of the child *as an Indian* ...." (emphasis added). The provision ignores all other aspects of the child's status as a human being. That, in my view, is pure racism.

Celebrating the United States Constitution

The Fourteenth Amendment to the Constitution was adopted to protect the rights of the individual against classifications based on the individual's race. This bill cannot be reconciled with that guiding principle. It is not enough to say "but, this is 'Indian legislation.'" Indians are, and certainly should be, entitled to the basic protections of the Constitution even when those protections would be denied by "Indian legislation." *See Hodel v. Irving*, 107 S.Ct. 2076 (1987)(Just Compensation Clause of *Fifth Amendment*).

Second. The bill is contrary to what I believe is sound, prevailing *public* policy in this country -- in adoption and child custody cases, it is the interests of the child which are of paramount importance. This bill subordinates the best interests of the child to that of the tribe. While we all can agree that a child's knowledge of and exposure to his or her cultural heritage can be a vital and valuable aspect of the child's personality and value system, it is wrong to elevate that concept to a point where it overrides virtually every other concern bearing on the fundamental well-being of the child.

Third. At least the current Act limits the jurisdictional claim of the *tribe* to children of tribal members. Such membership typically is obtained by voluntary enrollment or at least can be terminated by the Indian's voluntary act, thereby creating a situation where the tribal member arguably may be said to have consented to application of tribal law. This bill, however, extends the jurisdictional reach of the tribe to children whose parents need not be tribal members. Indeed, the parents and other ancestors of the child may have had no connection with the tribe, perhaps for years or even generations.

In such circumstances, it seems to me that the state in which the parents and child are domiciled does have a proper and overriding interest to see to it that its processes, not those of the tribe, are invoked to assure that the child custody or adoption proceeding will result in protecting the best interests of the child.

The bill does substantial violence to important consitutional principles and to sound public policy. Mr. Chairman, you may wish to inquire of Assistant Secretary Swimmer about the accusations frequently leveled against the United States for its treatment of Indians when the issue of human rights within the Soviet Union arises. Enactment of this bill in the name of "Indian legislation" simply will provide significant fuel to that fire. The bill should not be enacted.

Sincerely,

Donald Paul Hodel

DONALD PAUL HODEL

cc: Hon. Daniel J. Evans,
Ranking Minority Member

STATEMENT BY EDDIE F. BROWN
DIRECTOR

ARIZONA DEPARTMENT OF ECONOMIC SECURITY

BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

May 11, 1988

I appreciate the opportunity to address you today regarding the Indian Child Welfare Act (ICWA). My name is Eddie Brown. I am the Director of the Department of Economic Security (DES) and an enrolled member of the Pascua Yaqui Tribe. The ICWA provides for the establishment of relationships between the states and tribal governments in order to protect and preserve Indian families and communities. The state of Arizona fully supports the rights of tribal governments to intervene in child custody matters regarding children members of tribes.

The Arizona Department of Economic Security administers state and federal human service programs in Arizona and is responsible for child welfare programs including child protective services, foster care and adoptions. The department also licenses and monitors child placing group care and adoption agencies. In Arizona, there are 20 federally recognized tribal governments which have jurisdiction over tribal lands. Reservations account for 26.6% of the total land base and are located throughout the state. The total Indian population residing on Arizona Indian reservations is approximately 200.000. This represents the largest reservation Indian population in the United States and accounts for approximately 20% of the reservation Indian population nationwide. Forty-six percent (46%) of the reservation population is under 18 years of age.

Many accomplishments have resulted from implementation of the ICWA. The number of Indian children in state licensed foster care homes has been reduced from 220 in 1980 to 84 in 1988. This number reflects 3.3% of our state agency's foster care population. Through joint efforts of the department, tribal governments and the Inter-Tribal Council of Arizona, further accomplishments include:

- A permanent Indian Child Welfare Specialist position to coordinate services for Indian Children funded through state appropriations.
- Thirteen (13) on-reservation Child Abuse/Neglect Prevention and Treatment programs funded through state appropriations.
- A Tribal Child Protective Service Academy Training Program which trained 35 tribal workers during the past year.
- An annual Indian child and family service conference, now in its fourth year, to train state and tribal staff and define tribal, state and federal roles in the provision of services to Indian families.
- A project with the Arizona State University School of Social Work and ITCA to develop a model curriculum for child welfare workers serving Indian communities.
- The use of formal intergovernmental agreements to pass through Title IV-E foster care funding to tribes. The agreement recognizes the sovereign status of tribal governments.

We are proud of these accomplishments in Arizona and continue to work towards increased coordination of services and resources with tribal governments. The ICWA mandates have given our state the impetus for these activities.

This committee is to be commended for the complex task it has assumed in clarifying and strengthening the Indian Child Welfare Act. The Arizona Department of Economic Security has reviewed the proposed amendments dated December 16, 1987. These amendments provide new standards and procedures to protect the rights of Indian children and their relationships to their tribes. Tribal court jurisdiction is expanded. The amendments strengthen the role of the Indian family and the tribe in child custody proceedings through notification requirements and placement procedures.

In the best of all worlds, the amendment provisions would mean that the tribes would take cases involving Indian child custody proceedings into their courts relieving the state system of this responsibility. In reality, that does not happen. It is the experience of the Arizona Department of Economic Security that the tribes are rarely able to assume jurisdiction early in state proceedings because of their lack of social service and judicial resources. Tribal response to notification of hearings needs to be strengthened and coordinated to ensure early tribal intervention and participation.

The proposed requirements for state agencies and courts solidify what has been the practice of Arizona DES and its courts. The DES works closely with the tribes in providing services for their members. The department has supported the tribes' roles in state court proceedings and has encouraged tribes to assume jurisdiction. Procedures in the amendment eliminate subjectivity in applying the Act.

These provisions mandate additional efforts and recordkeeping that will require increased resources to be dedicated by our agency. It will be necessary to provide more detailed training of case managers in ICWA requirements and in the area of available resources. State attorneys prosecuting the dependency and termination proceedings will have additional trial responsibilities in order to protect the well-being of Indian children.

There are three specific areas that cause our agency concern. These are:

1. Separate state licensing standards for Indian foster homes.
2. Annual audits of private child placement agencies.
3. Funding guidelines and fiscal resources.

The following addresses these concerns in more detail.

1. Separate State Licensing Standards For Indian Foster Homes:

The Arizona Department of Economic Security recognizes the interests of the Indian community to place children in foster homes that maintain social and cultural ties. Our department seeks to place all minority children, whether black, Hispanic or Indian, in appropriate homes which meet health, social and cultural standards to ensure a child's growth and stability.

The proposed amendment to Title I, Section 105 (f) states "If necessary to comply with this section, a State shall promulgate in consultation with the affected tribes, separate state licensing standards for foster homes servicing Indian children and shall place Indian children in homes licensed or approved by the Indian child's tribe or an Indian organization." The "if necessary" provision is unclear. Our department recognizes the licensing authority of tribal social services on reservations. Arizona would strongly object, however, to having separate state promulgated standards for off-reservation foster families of Indian descent. Our current rules allow flexibility and consideration of cultural and environmental differences as long as the health, welfare and safety of the child is not jeopardized. Separate regulations would be impractical and unnecessary. Arizona's rule promulgation procedures allow considerable public comment. State law, procedures, and the additional costs for such enactment make this section of great concern.

2. Annual Audits of Private Child Placement Agencies:

Title I, Section 115 requires states to include compliance with the Act by the private child placement agencies "as a condition of continued licensure" and further mandates state agencies to "annually audit such agencies to ensure that they are in compliance." Throughout the country, it is recognized that there may be continued abuses of ICWA procedures. To require state agencies to monitor compliance of child placing agencies creates several difficulties:

- Licensing staff rarely review more than 5 to 10 case files of a child placing agency. The extent of the audit is not clear and probably could not be met with existing resources.
- State resources of time and staff are not sufficient to expand current monitoring functions.
- Licensing staff are knowledgeable regulators, however, such audit requirements would demand legal expertise not currently required of of social services licensing staff.

We would recommend that states be mandated to include, as a contract item, compliance with ICWA in licensing standards, not only for child placing agencies, but also for group care and adoption agencies.

3. Funding Guidelines and Fiscal Resources:

Title II, Section 203, addresses federal funding guidelines to carry out the provisions of the Act. These guidelines restrict grant awards to tribes or Indian organizations. Since the Act mandates state agencies to expand staff training, resource development, notification, legal requirements, and licensing functions, Congress must recognize that states will also need financial assistance.

Neither the tribes nor the states can adequately comply with the Act without sufficient funds. Indian tribes have received insufficient funds to meet the Act's mandates since its inception. As the ICWA caseload increased, funding at the national level decreased. Congress must consider entitlement funds to tribes and to states where federally recognized Indian tribes are located. Federal ICWA funding needs to be greatly expanded.

I am aware that additional funds are available through Title IV-B and Title IV-E of the Social Security Act. Of Arizona's 20 tribes, only 5 tribes (Navajo, Hopi, Gila River, San Carlos Apache, Tohono O'Dham) receive Title IV-B funds and only one tribe (Gila River) receives Title IV-E funds. The federal administrative requirements to receive these funds are complex and cumbersome. Tribes find it difficult to achieve the administrative sophistication needed for fiscal and programmatic compliance, particularly for Title IV-E. Tribes should be able to access Title IV-E funds directly from the federal government and simplification of administrative requirements should be considered.

The proposed amendment, Title II, Section 201 (c) requires further clarification regarding the responsibility and liability of the states with respect to tribal compliance or non-compliance with provisions under the Adoption Assistance and Child Welfare Act (P.L. 96-272). States must not be held responsible for funds provided under Title IV-B and Title IV-E of the Social Security Act when such funds are no longer under the jurisdiction of the states.

Thank you for allowing me to present these issues to you today. The rights of the Indian children and their relationships to their tribes are extremely important. The realities of fiscal and programmatic resources which are available to the tribes and state child welfare agencies need to be considered prior to increased federal mandates.

Remarks of Eugene Ligtenberg before the United States Senate Select Committee on Indian Affairs

Washington, D.C.   May 11, 1988

My name is Eugene Ligtenberg. I am the Director of the South Dakota Division of The Casey Family Program. With me, in the room, are Elizabeth Garriott, a social worker from our office in Martin, South Dakota, serving the Pine Ridge and Rosebud reservations; and Darice Clark, a social worker from our office on the Fort Berthold Reservation in North Dakota. The Casey Family Program provides long-term foster care to children who cannot return to their biological parents and who are not likely to be adopted as determined at the time of intake. At the current time the program serves 97 Native Americans plus approximately 600 other children in Western United States. Two-thirds of the Native American children served are in North and South Dakota.

We would like to give our support to the Indian Child Welfare Act of 1978 and to S. 1976, which we believe would significantly improve the existing act.

The Native American culture is unique in this country and cannot be compared to other cultures and ethnicities.

Most Native American cultures have a natural "foster care" system that has been in existence for hundreds of years before contact with the majority culture. The process of acculturation and assimilation has drastically altered this system. Many native cultures view children as a responsibility of the group or tribe rather than a possession of a set of parents. Individual rights were subservient to the group or tribe, because native people viewed life as a whole entity made up of everyone and everything in the universe. Native people need to have the opportunity of this responsibility being returned to them.

For many years it was the policy of the United States government to assimilate native people into the dominant culture. This assimilation was not by choice of native people, but was forced upon them. Efforts to take away their unique tribal, kinship and religious values have been devastating. Now that tribes are again strengthening themselves, we must provide laws and the means for native people to re-establish themselves, their values and their customs. The Indian Child Welfare Act of 1978 has done much to reverse the movement of Indian children to non-Indian families, who, for the most part, have not been helpful in establishing the unique identity of Native American children.

S. 1976 will protect children who are not currently protected by existing law. It is not the responsibility of

Native American people to meet the demand of non-Indian families to have children through the adoption process.

The United States government established reservations for Indian tribes to have their own tribal government and to interact with the United States government as separate entities. Hence, other ethnic groups do not need to have Acts of Congress protect and preserve their heritage and culture in this way.

We support the priority setting for placement. In our experience, when we have committed ourselves to the preservation of a child's culture, we have been able to locate homes for Indian children as provided in the Act. We do not believe lack of Native American families is an adequate excuse for not complying with the priority established in the Act.

Many of the children with whom we work have previously been in non-Indian foster homes. Many of them have low self-esteem and lack identification with their culture. Many times they have a negative perception about Native Americans.

In policy and practice, we are committed to providing Native American children positive role models within Indian families. In addition we provide experiences designed to enhance their identity as Indian persons.

We support the amendments which require private agencies to comply with the Act as part of their licensing requirements and which require states to make active efforts to recruit and license Indian foster homes.

We support the establishment of Indian Child Welfare Committees in each area to monitor compliance with this Act on an on-going basis.

In my opinion, an Indian child who is helped to have a positive identity as an Indian person, has his or her chances of a happy, well-adjusted productive life significantly increased. I believe S. 1976 will increase the likelihood of that happening.

I urge your support and thank you for your consideration.

PREPARED STATEMENT OF DANIEL J. EVANS, U.S. SENATOR FROM WASHINGTON, VICE CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

THANK YOU, MR. CHAIRMAN. WE ARE HERE TODAY TO DISCUSS A VERY IMPORTANT BILL WHICH SERVES TO AMEND, THE INDIAN CHILD WELFARE ACT. THIS LAW WAS ENACTED IN 1978 AND SERVES TO PROTECT ONE OF THE MOST VITAL RESOURCES IN INDIAN COUNTRY: THE CHILDREN.

CONGRESS PASSED THIS LAW IN RESPONSE TO THE ALARMINGLY HIGH PERCENTAGE OF INDIAN CHILDREN WHO WERE SEPARATED FROM THEIR FAMILIES AND TRIBAL HERITAGE BY THE INTERFERENCE, OFTEN UNWARRANTED, OF NON-TRIBAL PUBLIC AND PRIVATE AGENCIES. WITH REGULARITY THESE CHILDREN WERE PLACED IN NON-INDIAN FOSTER AND ADOPTIVE HOMES AND INSTITUTIONS. THE WHOLESALE REMOVAL OF NEARLY 25 TO 35 PERCENT OF ALL INDIAN CHILDREN FROM THEIR FAMILIES AND HERITAGE OCCURRED PRIOR TO ENACTMENT OF THE INDIAN CHILD WELFARE ACT.

TODAY THAT DRAMATIC RATE HAS DECLINED, HOWEVER, A RECENTLY RELEASED STUDY COMMISSIONED BY THE ADMINISTRATION ON CHILDREN, YOUTH AND FAMILIES AND THE BUREAU OF INDIAN AFFAIRS REVEALS THAT INDIAN CHILDREN MAKE UP 0.9 PERCENT OF THE TOTAL CHILD POPULATION BUT REPRESENT 3.1 PERCENT OF THE TOTAL SUBSTITUTE CARE POPULATION. INDIAN CHILDREN ARE PLACED IN SUBSTITUTE CARE AT A RATE THAT IS 3.6 TIMES GREATER THAN THE RATE FOR NON-INDIAN CHILDREN. (THERE WERE 18 STATES WHO REPORTED EVEN A HIGHER RATE EXCEEDING THIS RATIO, INCLUDING: ALASKA (5.1:1); ARIZONA (3.9:1); MONTANA (8.6:1); NORTH DAKOTA (21.7:1); SOUTH DAKOTA

(25.2:1); AND WASHINGTON (4.0:1).)

THE NUMBER OF INDIAN CHILDREN IN SOME TYPE OF SUBSTITUTE CARE HAS INCREASED FROM 7,200 IN THE EARLY 1980'S TO 9,005 IN 1986. THE FINDINGS OF THIS NATIONAL STUDY INDICATE THAT MANY MORE INDIAN CHILDREN ENTERED RATHER THAN LEFT CARE IN 1986, WITH PROJECTIONS THAT THIS NUMBER WILL RISE EVEN FURTHER.

MR. CHAIRMAN AND DISTINGUISHED GUESTS, IT IS THE POLICY OF THIS NATION TO PROTECT THE BEST INTERESTS OF INDIAN CHILDREN AND TO PROMOTE THE STABILITY AND SECURITY OF INDIAN TRIBES AND FAMILIES. THE INDIAN CHILD WELFARE ACT HAS ATTEMPTED TO ADVANCE THIS POLICY THROUGH THE ESTABLISHMENT OF MINIMUM FEDERAL STANDARDS FOR THE REMOVAL OF INDIAN CHILDREN FROM THEIR FAMILIES AND BY REQUIRING THE PLACEMENT OF SUCH CHILDREN IN FOSTER OR ADOPTIVE HOMES WHICH ARE REFLECTIVE OF THE UNIQUE VALUES OF INDIAN CULTURE. THE NATIONAL STUDY, WHICH I HAVE HIGHLIGHTED, REVEALS THAT PREVENTIVE EFFORTS TO AVOID THE REMOVAL OF THE CHILD HAS OCCURRED IN ONLY 43 PERCENT OF THE CASES REVIEWED. MANY OTHER SHORTCOMINGS, AS WELL AS EXCELLENT RECOMMENDATIONS, RELATED TO PROPER IMPLEMENTATION OF THE INDIAN CHILD WELFARE ACT WERE IDENTIFIED IN THIS REPORT AND HAVE BEEN EXPANDED UPON IN PREVIOUS OVERSIGHT HEARINGS.

S. 1976, IS A SYNTHESIS OF THOSE RECOMMENDATIONS AND IS DESIGNED TO RESPOND TO THE CONCERNS EXPRESSED BY INDIAN TRIBES, CHILD WELFARE PROGRAMS AND COURT SYSTEMS. THESE AMENDMENTS, HOWEVER, ARE ONLY A FIRST STEP TOWARDS RECTIFYING THE PROBLEMS EXPERIENCED BY THE LIMITATIONS OF THE CURRENT ACT. AS WE APPROACH SOLUTIONS TO THESE PROBLEMS WE RECOGNIZE THAT THE TRIBES, THE STATES AND THE FEDERAL GOVERNMENT MUST WORK TOGETHER TO INCREASE SUCCESS IN ACHIEVING THE LANDMARK GOALS OF THE INDIAN CHILD WELFARE ACT.

OUR PURPOSE HERE TODAY IS TO EXPLORE WAYS TO IMPROVE THE TRUE INTENT OF THIS ACT: THAT OF PROTECTING THE BEST INTEREST OF THE INDIAN CHILD. I LOOK FORWARD TO YOUR COMMENTS AND RECOMMENDATIONS.

PREPARED STATEMENT OF ROBERT B. FLINT, BOARD MEMBER, CATHOLIC SOCIAL SERVICES, INC., ANCHORAGE, AK

Mr. Chairman and members of the Select Committee on Indian Affairs, I am Robert B. Flint, board member and counsel of Catholic Social Services, a private, nonprofit agency serving South Central Alaska. Accompanying me is Sister Mary Clare who founded the agency in 1966 and was its Executive Director for nearly 20 years.

Catholic Social Services, since its inception, has provided counseling services to birth parents and adoption placement where such a parent has decided to relinquish a child. Many of our clients are Alaska Natives. As a result, we are very interested in the Indian Child Welfare Act and S. 1976 which proposes to enact substantial changes in the statute.

We are well aware of the importance of Indian and Native culture and are sensitive to the concerns which led to the enactment of ICWA in 1978. We strongly support efforts to keep families intact and to preserve cultural heritage and rights including those of children. Ten years ago Sister Clare testified on the Indian Child Welfare Act before the House Subcommittee. Our concerns with S. 1976 are the same she expressed then - confidentially and parental choice. In 1978 Congress enacted ICWA with language designed to preserve the individual rights of Native parents in these two very sensitive and personal areas.

The 1978 Act provided for notice to Indian tribes in the case of involuntary adoption proceedings, but not in that of voluntary proceedings. An order of placement preference was established, but this order could be varied or dispensed with for good cause. The statute specifically provided that the preference of the birth parent must be considered. Confidentality was preserved in record keeping by allowing the birth parent to file a confidentality affidavit which acted to bar release of his or her name and address. We have operated under this statute with Native birth parents for ten years. In our opinion, the 1978 Act strikes a proper balance between individual rights and group rights.

We start from the premise that Indian citizens should have the same rights as any other individual American. Additionally, because of the special relationship, Indians may gain additional rights or privileges, and steps may be legitimately taken to preserve cultural heritage. We believe it to be wrong, however, constitutionally, and as a matter of public policy, to make Indians second class citizens by denying to Indian birth parents the same confidentiality and decision-making rights others have. S. 1976 would result in discrimination in the following ways:

1. Section 101(b) deprives the consenting birth parent of the right to object to transfer to a tribal court.

2. Section 101(d) requires notice to the tribe in any adoptive placement.

3. Section 103(a)(2) requires notice to the tribe for a consent proceeding even over the objection of the parent.

4. Section 105(d) and (e) virtually prohibit placement of a child with a non-native family even if the birth parent has chosen such a familly.

5. Section 107 discloses the birth parent's name even if there is an objection by that parent.

We do not believe that the problem with the preservation of Indian culture lies in the voluntary adoption area. Even if it did, the coercive power contained in S. 1976 is a poor way to preserve culture. Indians, as well as any other persons with an ethnic background, can choose to remain in a culture or not. Where some choose not to remain, coercion is an unworthy and ineffective means to a good end.

On behalf of the Native birth parents we serve, Catholic Social Services requests that any bill passed incorporate provisions allowing birth parents to object to: (1) court transfer, (2) notice to the tribe and, (3) release of identifying information, and to express a placement preference that will be honored.

Additionally, we are concerned with the following sections:

a) Section 4(2). A person should be allowed to choose his or her own domicile.

b) Section 4(4). A person "considered to be a part of a community" is too vague.

c) Section 4(15). A tribal court should be a court, not an administrative body.

D) Section 103(c). This section should retain a cut off for a decree of termination. The adoption decree, because of the home study, is often much later and results in too long a period to withdraw a consent.

Thank you for your consideration.

MARC GRADSTEIN
ATTORNEY AT LAW
1109 VICENTE STREET, SUITE 101
SAN FRANCISCO, CALIFORNIA 94116
TELEPHONE (415) 665-6695

May 9, 1988

Senate Select Committee
on Indian Affairs
U.S. Senate
Senate Hart Building, Room 838
2nd and Constitution Streets,N.E.
Washington, D.C. 20510
Attn: Pete Taylor

Honorable Senators:

I am shocked to find myself opposing a bill which is apparently intended to protect and expand the welfare of Indian children. I am very much in favor of that worthy goal. However, the old saying, "the road to hell is paved with good intentions," could not have a more appropriate example than S. 1976.

Twenty years ago, I spent the summer in Pine Ridge, South Dakota. As a law student, I was there to help the people on that reservation with their legal problems. My two colleagues and I were sent there as volunteers by the Law Students' Civil Rights Research Council, under the sponsorship of the Association on American Indian Affairs.

I learned a lot that summer. The Indians I encountered were proud people. Proud of their heritage; proud of themselves. The elderly full-blooded Sioux woman who asked me to "liberate" her car comes to mind. A Nebraska auto dealer had illegally repossed it, and the threat of legal action was enough for us to persuade him to give her the keys. We drove back to her small, dirt-floored, wood house victoriously. As I was about to leave, she pressed a 75 year old silver dollar into my hand and insisted, over my protestations, that I take it. She could not accept my help without "paying" for it.

I got a taste - albeit a small one - of the racism that persists against our Indian brothers and sisters three years later. I was in Santa Fe, New Mexico, as a driver/chaperone of a group of students from Boulder High School, on a weekend visit to the Institute of American Indian Art. I was having a late night sandwich at a resaurant in the company of several (Indian) teachers there. I was also wearing the beaded headband I had been given by a young friend as a going-away present at Pine Ridge.

A man on his way out of the restaurant tousled my hair as he walked by and said loudly, "You Indians should all go back to the reservations where you belong." My companions' body language told me to "cool it," and after he left, they said that it was not worth fighting over - things like that happen all the time. Indeed.

Non-Indian Americans have reaped the benefits of the mass-murder and theft perpetrated against the Indians. We should all encourage and support legislation to remedy the dreadful poverty, inadequate health service, lack of economic opportunity and depression that pervade many reservations. Likewise, we should do everything possible to protect Indian culture and respect for it.

Forced assimilation of Indians into non-Indian society would be nothing less than genocide. The Indian Child Welfare Act of 1978 (hereafter "ICWA"), was intended to prevent just that:

> "The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs."
> 25 U.S.C. 1902.

It creates a class of "Indian children," who are clearly defined as: tribal members or children of tribal members who are, themselves, eligible for membership. 25 U.S.C. 1903 (4). It clearly gives tribal courts jurisdiction over child custody proceedings within the usual jurisdiction of tribal courts - that is, involving children on the tribe's reservation. 25 U.S.C. 1911(a).

It further gives those courts jurisdiction over Indian child custody proceedings which would otherwise be subject to state court jurisdiction, unless: (1) there is good cause to the contrary, (2) a parent objects, or (3) the tribal court objects. 25 U.S.C. 1911(b).

The ICWA enables parents of Indian children to be well protected in state court proceedings from having their children taken from them against their wishes. Their tribe can intervene, they can have court-appointed counsel, expert witnesses are required, and high standards of proof must be met.

25 U.S.C. 1911(c), 1912. If parental rights are, nevertheless, severed involuntarily, then the child's Indian heritage is given great weight in regard to his/her ultimate placement. 25 U.S.C. 1915.

Voluntary placements are allowed by the ICWA, but here, too, the parent is protected by having a judge certify that the parental consent was given knowingly, voluntarily and at least ten days after the child's birth. 25 U.S.C. 1913(a). A further safeguard is the right to withdraw consent until a final decree of termination or adoption is entered. 25 U.S.C. 1913(c).

It is difficult to imagine a more comprehensive way in which to guarantee that Indian children will not be:

(1) involuntarily removed from their parents without justification, or
(2) placed by public and private agencies in non-Indian environments, or

(3) voluntarily placed by their parents without their informed consent.

The ICWA protects the rights of parents of Indian children. That, however, is not the goal of S.1976. The "new improved" ICWA, as amended, would subordinate parental rights to the superior wisdom of tribal courts. If enacted, S. 1976 would prevent a parent from choosing the adoptive home for the child. It would also expand the number of children within the ambit of the ICWA to the point of absurdity. It would lead to great uncertainty as to the validity of adoption decrees. It would lead to the abortion of more Indian children. For these reasons, I vehemently oppose this truly frightening bill.

My expertise is not in the area of Indian child welfare. As an attorney, I specialize in private adoption. Infertile couples seeking a child to adopt come to my office, and we help them to locate parents seeking to voluntarily place their child for adoption. The parties usually meet and get to know each other before the birth, and the child is usually placed directly into the adoptive home. The parties are the subject of a report by our State Department of Social Services, and ultimately a judge must decide that it is best for the child that the adoption be granted.

I believe that this process serves all concerned. The child gets a good home. The adoptive parents get the opportunity to raise and love a child. The biological parents get the satisfaction of choosing the home for the child they love, but cannot raise.

I have never been involved in a contested adoption with Indian parents or an Indian tribe. I have, however, handled numerous adoptions in which the child was of Indian descent. In less than five percent of those cases was it necessary to obtain the parent's consent in the presence of a judge, pursuant to the ICWA. This is because so many people are "part" Indian, but only a little bit. If they can identify the tribe, the tribe has usually never heard of them or their part-Indian ancestor. Therefore they are not, nor is their child, eligible for membership.

Under S. 1976, the definition of "Indian child" has been broadened to include a child who "is of Indian descent and considered by an Indian tribe, to be part of its community. . ." (Sec. 4(5) (c), p. 7, lines 20-21). This appears to potentially include any child with an Indian ancestor. There is no objective test; so if a tribe decided to consider a child that was one-millionth (or less) Indian to be a member of its community it would come within the ICWA. (Ironically, this child would not be elligible for the benefits of membership).

Under the present law that, alone, would not change things too drastically. The biological parent could still place the "Indian child" in the home of choice, but would have to sign consent in the presence of the court. And the consent would be absolutely subject to revocation until the adoption became final (contrary to the usual practice in virtually all states).

However, if S. 1976 is enacted, the signing of the consent would preclude the parent from objecting to having the case transferred to tribal court. (S.1976, Sec. 101 (b), p. 12, lines 3-19). Thus, the decision to place the child in the adoptive home would be at the mercy of the particular tribal court.

The parent's wish to keep the adoption from the tribe's awareness would be thwarted, because under S. 1976 her right to privacy is non-existent. (S. 1976, Sec. 103(a) (2), p. 19, lines 4-19).

In practice, the parent who voluntarily seeks an adoptive placement outside the tribal court would have three unhappy choices: (1) "forget" about the Indian ancestor; or
(2) have an abortion; or
(3) raise the child.

It is difficult to believe that our legislators, upon reflection, would want to enact such a counterproductive law. Furthermore, although I have addressed only voluntary placements, the overbroad new "definition" of "Indian child," and the incredible expansion of tribal court jurisdiction could lead to equally ludicrous results in involuntary termination cases. (For example: A ten year old child is the subject of a termination action on the grounds of abandonment or abuse. The state juvenile court terminates parental rights. The child has been living for 2 years in a foster home which wishes to adopt the child. The child is one-millionth Indian. Tribal court takes jurisdiction and places the child on an out-of-state reservation with complete strangers).

If the ICWA is to be amended at all, I have three suggestions:

(1) Clearly limit the right of intervention to involuntary proceedings only. 25 U.S.C. 1911(c).

(2) Clearly apply the two year limit on collateral attack to the entire ICWA. 25 U.S.C. 1913(d).

(3) Clearly give a parent placing a child voluntarily for adoption an inviolable right to privacy. (California law requires that the tribe be contacted. This can cause the parent to become an object of social scorn.)

Finally, I want to thank the Committee for giving me this opportunity to offer my views. Although I believe that S. 1976, if enacted, would ultimately be declared unconstitutional, it would cause a great deal of harm until then.

Respectfully submitted,

MARC GRADSTEIN
Attorney at Law

MG/kh

P.S. Attached as exhibits are letters from:

Benjamin C. Faulkner
Attorney at Law

Rita L. Bender
Attorney at Law

Catherine M. Dexter
Attorney at Law

Philip Adams
Attorney at Law

ENGLISH, JONES & FAULKNER
ATTORNEYS AT LAW
1700 FOURTH NATIONAL BANK BUILDING
TULSA, OKLAHOMA 74119

THOMAS E. ENGLISH
BRUCE JONES
BENJAMIN C. FAULKNER
STEPHEN S. RANKIN
CAROL WOOD
DOUGLAS S. TRIPP
PAULA A. JACKSON

AREA CODE 918
TELEPHONE 582-1564

TELECOPIER
(918) 582-1582

May 4, 1988

Mark Gradstein, Esq.
1109 Vicente Street, Suite 101
San Francisco, California 94116

Re: Federal Indian Child Welfare Act.

Dear Mr. Gradstein:

I understand that you will be testifying before the Senate Select Committee on Indian Affairs on May 11, 1988, regarding an amendment to the Federal Indian Child Welfare Act ("ICWA"), sponsored by Senator Daniel Evans, R-Wash.

If given the opportunity, please read this letter into the record, reflecting a case history in Oklahoma which would have a different result if the amendment were to pass. However, if possible, protect our anonymity by keeping our names confidential.

We are strongly opposed to the amendment which would dictate solely on the basis of a trace of Indian heritage, that a child eligible for adoption must be placed upon purely racial grounds, ignoring all other factors that should be considered in the best interest of the child.

My wife and I are Oklahomans. She is 1/32 Cherokee and I have no documented Indian blood. I grew up, in part, in Latin-American countries, because my Okie father traveled in the oil business. I speak Spanish and love the Latin-American cultures.

We encountered a pregnant girl who wanted to place her unborn child for adoption. She had three other small children and simply could not provide for a fourth. The mother is 1/4 Creek and the baby's father is 4/4 Hispanic. Thus, the baby would be 1/8 Creek and 1/2 Mexican-American.

The mother does not live on a reservation, in an Indian community, nor in an Indian lifestyle.

When she learned the basics of our multi-ethnic/cultural background she was delighted at the prospect of our adoption of her baby. She and my wife talked frequently by telephone about "things" before the baby was born. The baby was born and we commenced the adoption process with the hearty approval of the mother, and the tacit consent of the natural father. We complied with all the laws, including ICWA. To our chagrin, and to the outrage of the natural mother, the Creek Nation intervened and declared all-out war on us. After five months of trauma, a complete trial was held in District Court, replete with testimony of a psychologist, an anthropologist and a thorough evaluation by the Welfare Department.

The Tribe's position was that adoptive parents who did not speak Creek were *per se* ineligible to adopt a child with any scintilla of Creek blood. This was interesting in light of the fact that by these Creek standards, the natural mother herself would have been ineligible to adopt her own child. The Tribe had no particular adoptive couple in mind, but would "warehouse" the child in a foster home until a suitable couple could be found.

The Judge found it to be in the best interest of this child that we adopt him; in part because of the mother's wishes, in part because my wife is Cherokee, and in part because I will protect his Latin-American heritage. He granted the final adoption. The case is now on appeal to the Oklahoma Supreme Court by the Tribe.

What will happen?

The amendment suggested by Senator Evans would institute a policy of racism that is abhorrent to our sensibilities.

Of course the child's Indian heritage is important and should be protected. But judges and parents -especially parents- deserve the flexibility and discretion to evaluate the overall needs and interests of each particular child. A law which forces an unnatural presumption of rectitude, based upon one racial facet of a multi-racial child, is a threat to the true spirit of civil liberties, and a millstone around the neck of every child it affects.

In our case, it would deprive the child of the opportunity to have all his ethnic and cultural characteristics protected and developed in mainstream American society, as his natural parents desire, and as his adoptive mother, a 1/32 Cherokee, desires.

I hope this letter is of assistance in putting into focus the possible noxious effects of the proposed amendment.

I would like to add that as an attorney who handles private adoptions, I have, on more than one occasion, discovered adoptions that took place in which the parties apparently did not disclose the Indian blood of the infant, because of their fear that the natural parents' desires for the placement would not be followed. Obviously, in those instances ICWA worked to deprive the children totally of their heritage.

Sincerely,

Benj C. Faulkner

Benjamin C. Faulkner

BCF/le

Law Offices
of
RITA L. BENDER

Rita L. Bender
Katharine C. Hershey

83 S. King Street, Suite 715
Seattle, Washington 98104
(206) 464-1932

May 4, 1988

SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS
United States Senate
Washington, D.C.

Honorable Senators:

I write this letter as comment upon the pending amendment to the Indian Child Welfare Act, S.1976. I am in legal practice in Seattle, Washington. I engage in substantial representation of birth parents and prospective adoptive parents. I am the author of the chapter on Washington Adoption Law to be published in the new Washington Practice Series by West Publishing.

The Senate is presently addressing adoption law issues in its consideration of amendment to the Indian Child Welfare Act. I am of the opinion that the Indian Child Welfare Act of 1978 was an appropriate piece of legislation, which has gone a substantial distance towards ameliorating problems which previously existed of interference between Indian families, tribes and children. However, the pending amendments to the Act have certain flaws, which I urge you to consider and correct before final passage.

The definition section of the amendment provides that Indian child means

> "any unmarried person who is under age eighteen and is a) a member of an Indian tribe, or b) is eligible for membership in an Indian tribe, or c) is of Indian descent and is considered by an Indian tribe to be a part of its community ... if a child is an infant he or she is considered to be part of a tribal community if either parent is so considered."

The problem with the expanded definition of "Indian child" is the lack of clarity. There is no definition of Indian descent. Since this may include a child who has some small portion of Indian heritage, and such ethnic background may be unknown to the placing agency or parent, the adoption could subsequently be called into question by a family member who later revealed the existence of such background. I can conceive of this problem arising in the context of unmarried fathers, whose family background may be little known to the mother.

Since the definition of Indian child includes a child "who is considered by an Indian tribe to be a part of its community," or an infant child whose "either parent is considered to be part of a tribal community," the information available at the time of placement may not be sufficient to know whether a tribe would consider this an Indian child.

My primary concern with the vague and overbroad definition of Indian child is that it may be very difficult to make a judgment at the time the placement is originally considered as to whether Indian Child Welfare Act applies. To fail to follow the Act where it is necessary will result in an adoption proceeding in which the child is vulnerable, as the Act provides for intervention by the child's family and for vacation or setting aside of final judgment. The new definition may create extreme uncertainty, which in many cases cannot be resolved. Adoption should be safe for all the parties involved, as the human stakes are far too high to place at risk by vague laws.

The draft of the Act further provides that in voluntary proceedings, no request for confidentiality will be honored; the tribe must be notified of the pending placement. The result is that a mother considering relinquishment of her child for adoption, should either she or the child's father be of native descent and considered by either an Indian or Alaska native tribe to be part of its community (facts which may or may not be known to the mother), must suffer the ensuing lack of privacy. That is, she may not make plans for the placement of her child in private, despite the fact that she does have the right to make plans to abort the child without notice to anyone. Thus, a mother who determines to give her child life, is then denied the right to make decisions for the child's placement without notice to and involvement by a tribe with whom she may have no affiliation. Such an outcome does not appear to me to be sound.

I know that you will be receiving comments from many sources, and that the task of reconciling all of the competing interests is large.

Thank you for giving me the opportunity to express my concerns.

Respectfully,

RITA L. BENDER

RLB:mln

MULLER & DEXTER
ATTORNEYS AT LAW
210 CENTURY BUILDING
1208 S.W. 13th AVE.
PORTLAND, OREGON 97205
TELEPHONE (503) 222-2474

RICHARD H. MULLER
CATHERINE M. DEXTER

SUSAN C. MOFFET

May 6, 1988

Mr. Marc Gradstein
Attorney at Law
1109 Vicente Street
Suite 101
San Francisco, CA 94116

RE: Senate Bill 1976 Amending the Indian Child Welfare Act

Dear Mr. Gradstein:

It has come to our attention that you will be testifing at the Senate Select Committee on Indian Affairs in Washington D.C. next week. As you are aware, our office is located in Portland, Oregon and practices heavily in the area of independent adoption. Because of the impact we feel the proposed changes to the Indian Child Welfare Act (as set forth in Senate Bill 1976) will have on private adoption, we request that you present our letter to the Senate Committee along with documentation you will be submitting on your behalf.

Our concern with the proposed bill centers on the expansion of definitions for "Indian Child" and "Parent". We feel that the proposed definitions will undermine the security of private adoptions beyond the intent of the drafter of the new legislation.

Currently, a "Indian Child" is defined as an unmarried person under the age of eighteen (18) who is either an enrolled member of an Indian Tribe or eligible for membership in an Indian Tribe. Proposed Section 4(5)(c) extends the definition of parent to include a child who:

> ..."(c) is of Indian decent and is considered by the Indian tribe to be part of its community, or, for purposes of sections 107, any person who is seeking to determine eligibility for tribal membership; if a child is an infant he or she is considered to be part of a tribal community if either parent is so considered;

Expanding the Indian Child Welfare Act in this manner, will make it virturally impossible for attorneys and prospective adoptive parents to determine if a given child is or is not a

"Indian Child". Currently, one may call the BIA or the local tribe and find out if a young woman seeking to place her unborn child for adoption is enrolled as a member of an Indian tribe. From that, it is easy to determine whether or not the child is "enrollable". By expanding the definition to include any child that is considered by the Indian tribe to be a part of its community, it would be virturally impossible for prospective adoptive parents or their attorney to literally "read the mind" of the tribe in determining whether a particular infant is considered within its purview. This would theoretically make it possible for the tribe to come back years after the adoption has been finalized and argue that the child was within its "consideration" when there was no objective way for the adoptive parents or their attorney to determine that at the time of the placement and adoption.

Our second concern is the definition of a "parent" under Section 4(10) of the Act which expands the definition to include unwed fathers where paternity has been "recognized in accordance with tribal custom". This expansion of the previous definition of "parent" could mean that a father may have performed some act within the custom of his tribe regarding a child born to a caucasian woman who has no knowledge of what the tribe's customs are or its effect on the adoptability of her unborn child. Under the current requirements, the father would have to do an overt act under state law in order the acknowledge the child or establish paternity under a state sponsored paternity suit. Both of these means would be known and easily determined by the birth mother, prospective adoptive parents or their attorney. Because individualized tribal customs vary, it is virtually impossible to determine in advance whether some local "custom" of the tribe has been followed when the birth mother or prospective adoptive parents may have no access or right to access of information regarding that custom.

We request that you draw the Senate Committee's attention to these problems inherent in expanding the definitions of "Indian Child" and "parent" in regard to private adoption. We respectfully suggest that either these definitions remain as they currently are or that an exemption be written into the proposed bill as to their impact on private adoptions.

Thank you in advance for considering our views in this matter.

Sincerely,

Catherine M. Dexter

CATHERINE M. DEXTER

CMD:mmj

Philip Adams
ATTORNEY AT LAW
1020 MILLS BUILDING
220 MONTGOMERY STREET
San Francisco 94104
(415) GARFIELD 1-1296

May 4, 1988

Select Committee on Indian Affairs
United States Senate
Washington, D.C.

In RE: S.1976

Dear Sirs:

I wish to urge your Committee to vote against any favorable action on the proposed amendment to the Indian Child Welfare Act. I have been active in the field of adoptions in California since 1943 and have been an interested observer of the growth of legislation in this field for 40 years. I believe that the thrust of the original Indian Child Welfare Act was a dubious one as it tended to negate the individual rights of a woman over her child solely on the basis of alleged primacy of the social group to which she happened to be assigned.

It is my recollection that Indian's have been American citizens since the 1920's and I see a serious constitutional question in a law which purports to curtail the unquestionable rights of an American citizen to determine the future of his or her own child in legislation which purports to Indian Tribal Courts as having superior authority. On a practical basis if one defends this type of legislation on the basis that an individual Indian woman is not competent enough to decide where her child is to be raised, what reasonable basis is there to decide that the conglomeration of such incompetent people in a tribe is anything more than incompetence raised to the nth power.

However the existing Child Welfare Act is at least limited to the objective criteria. It must be demonstrated that the child is eligible for enrollment in an existing unit under established percentages of Indian blood. Vague traditions in a family "we have some Indian blood" without any specific tribe or individual involved is insufficient. Under the proposed legislation there would be substituted a totally vague standard of "Indian descent".

You have undoubtedly observed the horror story of the 9 or 10 year old boy in Utah who is being torn out of the only home he has known, and most recently, the case involving the Navajo child in San Jose. One gets the feeling the tribal courts are motivated by a feeling of "we will teach these white folks".

Certainly I hope your Committee will come to a conclusion that whatever the merits of the existing statute are, that the proposed amendments would do more harm than good.

Respectfully yours,

PHILIP ADAMS .

PA/jf

MacLean & Jacques, Ltd.
ATTORNEYS AT LAW
40 EAST VIRGINIA, SUITE 202
PHOENIX, ARIZONA 85004
(602)263-5771

May 6, 1988

TO WHOM IT MAY CONCERN:

Re: **INDIAN CHILD WELFARE ACT**

This is to advise that I do numerous adoptions in the State of Arizona and I have felt for some time that the Indian Child Welfare Act is one of the most cumbersome and unnecessary acts that I have ever had to work with. I probably do more private adoptions than anyone in the State of Arizona and in many other states, and I frankly do not see a reason for the Act in the first instance. It is on very rare occasions that we do adoptions of an Indian child and I would doubt the statistics, when I see your language, ". . an alarmingly large percentage of Indian children are separated from their families. . .". In addition to this, it has always seemed unfair to me that the mother, and often the father as well, of a child desires to adopt out the child and just because they just happen to be of an Indian heritage, their own tribal law, or U.S. Indian law, either prevents them from doing it or makes it extremely difficult for them. To my knowledge, they are the only birth parents in the United States who have these burdensome restrictions upon them.

My first suggestion would be that the entire Act be scrapped, but if it is preserved then I think that the natural mother should have a much greater role in the placement of her child and the ability to give a final consent to an adoption.

Very truly yours,

MAC LEAN & JACQUES, LTD.

John H MacLean

JOHN H. MAC LEAN

JHM:rmt

Jed Somit, Attorney At Law (415) 839-3215

1440 Broadway Suite 910
Oakland, California 94612

May 6, 1988

To the Honorable United States Senators
Considering S. 196

re: S. 1976
Amendments to Indian Child Welfare Act

Dear Sirs:

I oppose the proposed amendments to the Indian Child Welfare Act.

I am a father of three children by adoption. My law practice includes independent (private) adoptions. I am very active in the State of California on adoption related issues and legislation.

The Indian Child Welfare Act, in its present language, well serves the important interests of the legislation to protect the various Indian Tribes from having children who would have been raised in the Tribe's culture from being adopted or placed outside the Tribe and the Tribe's heritage, culture and institutions. For children residing or domiciled on a reservation, the existing power of the Tribe to obtain jurisdiction is extensive, and when jurisdiction is exercised pursuant to the Act, such jurisdiction is exclusive of the civil courts of the States. This existing power is fully adequate to protect the interest of the Indian Tribes.

The proposed amendments present many problems and dangers, to the children who may become subject to the Act, and to both sets of parents involved in adoptions (the birthparents and the adopting parents). A member of an Indian Tribe who has left the reservation and decided to be domiciled and to reside off the reservation, should not be deemed to have surrendered all her rights to influence or determine her child's upbringing. If she, perhaps even years or decades after leaving the reservation, decides to place a child for adoption, she should be allowed, like every other citizen, to be able to select a home and the adoptive parents for her child. Yet, under the proposed amendments, even though she has not had any contact with her Tribe for years, the Tribe could assert exclusive jurisdiction, over her objections. The Tribe could then proceed to take the child from the adoptive home where it may have been for months and years, and place the child with another family, again over the objection and without the participation of the birthmother, or of the prospective adopting parents, who may be the only parents the child has known.

A birthmother who has consented only to a specific adoption under State law, can be held under the Act to have surrendered all her rights to custody of the child, Act, and therefor lose the power she had under State law to regain custody if the adoption she contemplated, and the only one to which she consented, could not be completed.

The laudable goal of protecting the Indian heritage does not require this result when the child's connection with the Tribe and its culture is attenuated. Yet, the whole purpose of the proposed amendments is to extend the Indian Child Welfare Act to children who have no close connection with the reservation or Indian culture; the amendments would extend exclusive jurisdiction simply on the basis of any part of Indian blood (descent) in the child. This departs from the original goal of the Act in protecting the Indian Tribes, and substitutes a right of the Tribes to impress children for purposes of artificially maintaining the reservation.

Under the broad wording of the amendments, if the Tribe so chooses, any infant born to any person with any percentage of Indian blood could be subject to the Act, and to exclusive Tribal jurisdiction, even if the birthparents have never had any connection (other than by blood) with the Tribe. The nexus with the Tribe's interest in maintaining a tribal identity is completely absent.

The law of almost all states requires that in custody matters, the legal parents are given a preference for custody, and that the crucial criterion is the "best interests of the child". There is great uniformity in approach among the various states, as well as a uniform law on custody jurisdiction, the Uniform Child Custody Jurisdiction Act.

In contrast, the Indian Child Welfare Act does not follow the customary and accepted approaches of preferring the biological parents, and consideration of child's best interests is only a part of the consideration in custody matters under the Act; great attention is given to the interest of the Tribe and its heritage.

United States Senate
re: S. 1976 Amendments to Indian Child Welfare Act
May 6, 1988
Page 3

While the Tribes' interests are substantial, the existing Act fully protects them. It is not necessary, and certainly not in the interest of the particular children involved, to extend the Act, and its anomalous approach to custody matters, beyond children actually raised within the Tribe's culture.

I respectfully request that the proposed amendments not be adopted.

Very truly yours,

Jed Somit

JS:cw
cc: Marc Gradstein, Esq. (to deliver to the Senate)
David Leavitt, Esq. (to deliver to the Senate)

REMARKS OF DAVID KEENE LEAVITT BEFORE THE UNITED STATES SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

WASHINGTON, D.C., MAY 11, 1988

My name is David Keene Leavitt. I am an attorney in California, specializing for the past 28 years in the adoption of children, often involving the Indian Child Welfare Act. I am here today on behalf of the Academy of California Adoption Lawyers, and as liaison of the Family Law Section, American Bar Association, for the Model Adoption Act.

Ten years of experience under the Indian Child Welfare Act has revealed harmful unintended consequences, particularly regarding children of mixed Indian and non-Indian ancestry. These problems are particularly acute in California, where over one third of all adoptions in the United States occur and almost everyone has come from somewhere else. When part-Indian ancestry is claimed, compliance with the Act almost never involves tribes within California. About 90% of the inquiries to the Bureau of Indian Affairs concerning California children of mixed Indian and non-Indian ancestry, fail to establish the suspected tribal connection. Nevertheless, they often delay adoption and sometimes frustrate the process entirely.

We support the purposes of the Indian Child Welfare Act. We understand the legitimate need of Indian tribes to maintain their populations, their integrity and their cultural values. Since overhaul is now before you, however, we must point out and ask the Committee to deal with the unexpected problems that the Act imposes upon the general population into which many Indians have assimilated during the past 100 years.

We urge this Committee to better define the scope of the act and more carefully delineate those children it seeks to protect from those youngsters outside its scope. We believe the act should exempt children who are without ethnic tribal connections or of only minor Indian ancestry.

The original Indian Child Welfare Act was obviously predicated upon certain unspoken assumptions: (1) That children within its scope were clearly identifiable as members of a tribe or a peripheral community; (2) That a protected child or its immediate family maintained at least some ethnic connections to tribal organizations, cultures or customs; (3) That Indian ancestry and ethnicity were so predominant and non-Indian characteristics so minor, that preservation of the Indian portion of the child's heritage warranted tribal supremacy over state law and Indian ancestors over non-Indian ancestors; and (4) That tribes, tribal offices and tribal resources were likely to be nearby, available to help and interested in retaining or absorbing the child. The assumptions are often invalid as to children of mixed ancestry whose Indian connections are minor or remote.

At the root of the problem is the question of assimilation. Assimilation is a major concern in many communities: Catholics and Jews, for example, complain that about half their offspring marry persons of other faiths. At a certain point many shed the identity of their ancestral group and create a blended new identity of their own. There is a point where assimilation into the general community eclipses special ancestral ties and they no longer warrant special treatment. In a program designed to preserve and perpetuate a single ancestral group, Congress has an important obligation to define the parameters of that group. Congress must set forth with particularity when persons have so merged into the general population that tribal law no longer supplants state law.

In my practice I interview more than two hundred expectant mothers annually. About one-third mention "Indian" as being part of their or the natural father's ancestry. For millions of Americans, who do not particularly consider themselves Indian, even a little "Indian blood" is seen as a badge of honor. Often, however, they are not quite sure to which tribe the ancestor belonged. I cannot recall even one person claiming ancestry in a California tribe!

The failure of precise definition has been harmful to Indian and non-Indian children alike.

Tribal intervention is not the problem. Tribes display no interest in the custody of children whose Indian ancestry is slight or remote, and ethnic relationship non-existent. They have neither the desire nor the resources to incorporate and provide for the long term care, special needs, or adoptive placement of such children.

The problem arises when persons who live entirely outside the Indian world, who may never have considered themselves "Indian", or participated directly or indirectly in tribal affairs, but are of partial Indian ancestry, attempt to frustrate and delay legitimate state court proceedings for adoption. For example, Sec. 105 of the Act sets forth rigid placement preferences for "Indian children", under which it appears virtually impossible for such a child to remain with a non-Indian family. This may well be appropriate for a child predominantly of Indian ancestry and ethnicity, but unreasonable in the case of a child almost entirely non-Indian but brought under the act by remote ancestral connections only.

The practical result is that parents of part Indian children who successfully invoke protection of the Act cause abandonment of adoption plans, seldom achieve custody of the child, and virtually never cause the entry of the child into an Indian environment. They do not enhance the population or ethnic wealth of the tribes. They are mere "spoilers". They use the act as a legal bludgeon for their own personal benefit, contrary to established principles of child welfare and adoption.

In some cases, the delay, red tape and expense of termination proceedings which might involve the Indian Child Welfare Act cause state authorities to avoid adoption service altogether to partially Indian children. Only this week the attorney for one of the largest public adoption agencies in the country told me that his agency routinely avoids adoption planning or termination of parental rights the moment a possibility of Indian ancestry arises. The agency has only so many workers, so much staff, so much time, and more children without Indian ancestry who need service than they can successfully handle. Rather than become embroiled in the Indian Child Welfare Act, they simply postpone and defer and delay and forget and ignore the part Indian child. Let me emphasize that this problem does not exist with the child whose Indian ancestry, heritage and tribal identification is known. Tribes are easily, promptly and often contacted. Children are protected as contemplated in the Act. It is only the part-Indian or the suspected - but - non-Indian child who suffers.

In several hundred of 2,000 adoptions I have handled since 1978, Indian ancestry has been claimed and inquiry made through the Bureau of Indian Affairs in an attempt to establish the tribal connection and comply with the Act, usually with negative results. According to the Director of the Adoptions Branch of the California State Department of Social Services, over 90% of the inquiries to the Bureau of Indian Affairs fail to establish the tribal link or identity. In each case, adoption is delayed. Consent to adoption cannot even be executed until it is determined whether federal, tribal or state formalities are to be observed. The problem is far more acute with abandoned or abused children who must remain in temporary care until parental rights are terminated. Often the delay is so great that no one will adopt the child at all!

Our most serious concern today is Section 4(4) and Section 4(5)(C) which defines 'Indian' and 'Indian child' as "any unmarried person who is under age 18 and is ... of Indian descent and is considered by an Indian tribe to be a member of its community".

The clear meaning of this language to most lawyers is that an Indian tribe could define anyone it pleases, who has even a drop of that tribe's ancestry, as a member of its community. Under such a definition, most Americans could well be considered an 'Indian' or an 'Indian child'!

I have been advised by Peter Taylor, of the Committee staff, that the language which so alarms us is based on a 1938 federal court decision involving persons partially of Indian descent, not enrolled in the tribe, but nevertheless living in proximity to and interacting with the tribal population. The term 'Indian community' was used by the court to describe these persons who were ancestrally and ethnically connected to the tribe, but not legally within it. The proposed amendment to the Act obviously intends to include persons on the periphery.

There is a point, however, at which persons leave the periphery of the tribe and enter the the mainstream of the general population. Once in the mainstream, they and their offspring look to the laws of the states in which they reside to govern their family relationships, and the adoption and placement of their children. We feel that these people are entitled to know with reasonable certainty when "Indianness" becomes subordinate and the general laws prevail.

Congress has a duty to more precisely define the scope of the Act with its impact on non-Indian or part-Indian people in mind. We have no specific proposal to make at this time, but tests might include a specific percentage of Indian ancestry. The phrase "substantial ethnic ties" comes to mind which might consist of factors such as tribal enrollment; receipt of tribal benefits; submission to tribal courts; tribal marriages, divorces or filiation proceedings; receipt of tribal communications; etc. Good lawyers familiar with Indian issues could forge a workable definition.

Unwed fathers are my second area of concern today. They constitute a major problem in the world of adoption today, with or without the Indian Child Welfare Act. The Act presently applies only to unwed fathers whose paternity has been acknowledged or adjudicated. It is a simple thing to acknowledge paternity, but a difficult thing to prove it. It is harder when the alleged father is absent, and dreadful where paternity is in doubt, an alleged father denies paternity, or is in flight to avoid the possibility of 18 years of child support.

Under the proposed amendments, the mere suspicion of "Indian-ness", in an absent, possibly questionable, birth father may engender seriously harmful consequences: voidable adoptions, insecure placements, reluctance of state courts to act if it is suspected that a tribal court might be the proper forum. Tribal identity may never be established, yet the adoption system is paralyzed until it is. Children remain interminably in foster care as a result. Under the proposed amendment, nearly any man a mother names as a possible father who might be of Indian ancestry, would stymie adoption indefinitely -- even if he ultimately turns out to be the wrong man or not an Indian after all!

California adoption law requires that the state locate and terminate the rights of alleged fathers whenever possible -- whether or not Indians are involved. State adoption workers report that almost half their time is consumed tracking down missing alleged fathers, most of whom they never find, and hardly any of whom admit paternity or exhibit interest in the child.

The threat of a missing unacknowledged, unadjudicated, unwed father who could blow the adoption away if he turns out to be a tribal member, curtails the liklihood of early, safe adoption. Families will be frightened away if a child might, months or years down the line, be claimed by a tribe. The heartbreaking impact of the recent Navajo litigation in San Jose created nationwide concern, even though those adopting parents knew at the outset that the Navajo tribe would be involved. Agonies and resentments would be exacerbated manyfold were litigation to occur years down the line when a missing or marginally indentified unwed father appears to assert Indian rights.

We urge retention of the present standard for unwed fathers: the Act should apply only where paternity is acknowledged or adjudicated.

Amendments to this legislation should honor the words of its title: "The Indian Child Welfare Act". It is not an Indian Welfare Act at the expense of children, nor should it subject Indian children to foreign values alien to their ancestral and ethnic heritage. It is contrary to the interests of all children, everywhere, to be denied love and security, to remain indefinitely in foster care or to become embroiled in protracted custody proceedings. Indian children are no different from the others. In that regard, I must call upon members of this Committee to re-examine and reject Section 102(g) which appears to say that drunkenness, crowded or inadequate housing, or "non-conforming" social behavior (whatever that may mean, i.e. homosexuality, sado-masochism, drug addiction?) cannot be considered likely to harm the Indian child. I cannot imagine a tribal court that would fail to consider such things or knowingly consign its children to such homes. Such language has no place in an Act to protect children.

The Academy of California Adoption Lawyers and I would welcome the opportunity to work with your staff and other interested persons to come up with workable solutions to the problems I have addressed. We hope that this ten year revision of the Indian Child Welfare Act will truly bring it up to date and make it better.

Because I had only three days to prepare these remarks, I would request leave of the Chair to furnish additional written material within two weeks for inclusion in the record.

NATIONAL INDIAN SOCIAL WORKERS ASSOCIATION, INC.

Testimony presented

by

National indian Social Workers Association

on

Senate Bill 1976

May 11, 1988

My name is Evelyn Lance Blanchard, Vice-president of the National Indian Social Workers Association. My association with the Indian Child Welfare Act is long, having participated in early efforts to bring about its enactment. The law has focused my career and I have become a student of it.

The Association strongly supports S.B. 1976. The proposed amendments are needed and they reflect what has been learned from law and social work primarily. There has been considerable progress over many issues in the ten years since the law was passed. The state of Washington Children's Division has on-going consultation with tribes and Indian organizations and Oregon enacted a law which provides foster care to Indian families from state public funds. Tribal and department workers are investigating abuse and neglect complaints together and supporting each others' efforts to assist families. The needed clarity that has stimulated these amendments comes from both difficulty and success.

Our comments will highlight issues in three areas: (1) developments in the field and practice; (2) best interest and least restrictive issues; and (3) the adoption of Canadian Native children by U.S. citizens.

1. Developments in the field and practice of Indian family and children's services.

It is not difficult to understand the developments that have taken place in light of a report by the Children's Bureau that the out-of-home placement rates of Indian children have returned to or have increased slightly above those reported in 1976. The Committee's attention has been called to the complications provided by the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272). The primary and major training opportunities for tribal and Indian organization workers have been provided through P.L. 97-276 rather than the ICWA. The ICWA seeks to prevent break up of the family as its clear first intent. The P.L. 96-276 is concerned with permanency planning which regulates the time and process by which a family can expect to receive help to maintain stability or reunite the family unit. The Adoption Assistance Act responds to a problem of foster care drift while the ICWA prevents the breakup of the Indian family. The 1976 study made clear the skills needed by Indian program workers. The work would involve developmental analysis and knowledge or attachment theory necessary to the many repatriation's that would take place. Preciseness of training was needed as workers, administrators and officials worked through conceptual translations of values and social control mechanisms. The tragedy of the enactment of the law was brought about by long-standing governmental action and in-action which had contributed to the destruction of Indian family life; there was much to learn and correct.

The expansions of the notice requirements, the definitions of child, family and tribe and curbs on voluntary placements, all reflect an increased knowledge of Indian family life and a need for strengthened requirements. Greater discipline is needed to implement the law fully. We are encouraged that the field recognizes open-adoptions more consistently but are concerned that the arrangements in these adoptions be very clear, and enforced by the Courts. Problems regarding "future opportunity to learn about their tribal identity" are highly debatable issues in my experience. For example, in the recent Carter/Halloway case, the natural mother asked that her sone have Navajo language lessons while he lives with his permanent guardians 50 weeks of the year. This request was opposed and notmade a part of the Court's order. The level of sophistication and respect necessary to permit open adoptions to work is high and complex, and must go beyond anon-Indian view of what it means to be an Indian.

Through the years, the Association has called the Committee's attention to the need for a reliable data base to monitor implementation of the Act. Years ago, Congress directed the BIA and the Children's Bureau to develop adequate reporting procedures regarding the law. As yet, these procedures are not in place. Considerations regarding what data are collected and need to be collected are developed without adequate consultation with tribes and states. A low cost effort proposed by tribes, Indian organizations and the states of Oregon and Washington was rejected by the BIA in spite of statements of interest and support by twenty-two other states. There does not yet exist a simple instrument that can guide workers to implement the law fully. Part of the difficulty experienced with implementation is that good instructional guidance has not been established which results in procedural errors by workers. The desires to change attitudes and behaviors are thwarted by confusion. The Bureau will soon report on a study developed to provide guidance needed. That study contained 11 different questionnaires with many open-ended questions. Compilations of the data into truly useable form will be difficult. The BIA is joined in the effort by the Children's Bureau. No real efforts have been made by the BIA to examine developing theory and practice in the field. Monies for study or development mainly come from the Children's Bureau with emphasis on technology transfer. Often the results of these efforts are primarily descriptive and do not deal sufficiently with the nuts and bolts of method and technique. The fact that Indian country is faced correcting and building contemporary social services systems is not sufficiently understood in these developments. Indian tribes are raising precise questions about the fit of activities such as parenting classes in the rehabilitation of these people and the extent to which these efforts incorporate customary lifeways and practices.

The attention to the extended family in the Act goes much beyond the issue of placement and is directly involved in a family's effort to stabilize itself.

2. The best interest of the child, the least restrictive setting and reasonable efforts.

These issues have surfaced as among the most difficult in the implementation of the law. Indian children have been fed into the adoption market for a long time. During the 50s, the BIA entered into an arrangement with Child Welfare League of America to place Indian children in non-Indian homes. Family and children's services in Indian communities are a recent phenomena. Up until the passage of the ICWA, child welfare matters were routinely turned over to state departments for services and placement of children even in non-280 states. The BIA reimbursed the states for costs incurred for the child. The authority and jurisdiction over the children was removed from the tribal setting and handed to the outside. This historical behavior has impeded tribes' ability to become knowledgeable about resources needed to assist many of their children and families and has preconditioned many courts' view regarding Indian peoples' ability to help themselves. These circumstances are complicated by a general lack of training for Indian and non-Indian workers alike. The vast majority of training available to Indians is through large conferences and sessions that are funded to support specific agendas of federal agencies, such as termination of parental rights and child protection teams.

The attitude that Indian children are better off if they are not raised on reservations or in Indian communities is yet widespread and strong. The continuing presence of this attitude prompts the worker to look outside the child's community rather than inside it. The heavy workload of many workers never allows them time to assist in the development of resources within the Indian community that will meet the child's needs. The shameful rates at which the ICWA is funded have never permitted the resources needed to study developmental efforts. Lack of commitment to these developmental efforts leads a high-ranking BIA official to proclaim in a recent issue of Linkages that poverty is not an important factor in abuse and neglect of Indian children. Indian people have always been poor! The fact that we are operating without clearly described characteristics of child abuse and neglectin Indian country ten years after the law was enacted presents a difficult situation for all involved. Lip service has been given to intergenerational characteristics of abuse and neglect and, more recently, faddish responses which came out of work with children of alcoholics have become the popular intervention, in spite of the fact that the law has always called for careful study of the problem where alcohol abuse is a factor.

Unfortunately, in too many places the needs of substitute caretakers are given greater weight than are the needs of the child to grow up within his/her own family. The best interest of the child too often has concentrated on the relationship the child has developed with foster parents rather than the natural parents with whom the initial and strong relationship was formed. The fact that workers and courts continue to concentrate on a brief period of the child's life and do not see the trauma and tragedy experienced by these children in adolecence and adulthood is an impedement to implementation and destructive to resource development. The prevailing attitudes and behaviors make it very difficult for workers to adhere to requirements of least restrictive setting and reasonable efforts. These problems are yhet so pervasive that a project specifically funded to look at "reasonable efforts" for Indian families was obscured in the description of the effort to a group of consultants called in for the work. Clarification of the effort was demended and a letter from the funding agency affirmed the Indian focus intent. While it would seem important to capture the philosophy of Indian thought to guide these developments, the majority of consultants were not Indians and an examination of these efforts in situ was not made. Another formula was advanced that addresses the complex issues in a simplistic manner. The amendments require greater attention and substantiation of the bases for removal of Indian children and their placement in foster care. The more precise information required and elimination of the escape clause, "good cause to the contrary," may provide the stimulation necessary to address the complex problems of Indian families who need support.

3. The adoption of Canadian Native children by U.S. citizens

The needs of the adoption marketin the U.S. maintain a high demand for children. When the U.S. tightened up adoption practices, many agencies turned their faces to Canada where Native children have fewer protections and the provincial governments control services to children in most areas. Because the jurisdiction of bands and reserves in Canada is not well recognized and respected, their children are in special danger of being removed from their homelands. The provinces contract with private agencies to provide services to these children. Unfortunately, the history of cooperative efforts between these agencies and the bands is poorer than what exists in the U.S. Native children are brought to the U.S. with no arrangements for them to meet their families and maintain any relationship with their communities. Too often these adoptions are disrupted and the children enter our juvenilejustice system from which some never escape. The experiences of physical, sexual and emotional abuse experienced by many of these while in adoptive placement are severe. Young people who are now being referred to me by Native agencies in Canada present a picture of serious damage. In addition to the trauma that they have experienced in their placements, these children often do not know whether they are U.S. or Canadian citizens. This may not seem like a tremendously serious problem to some of us and should be easily clarified. In addition to the severe identity confusion these children experience as a consequence of their placements, they see themselves as being without a country. Recent efforts to assist these children with these problems reveals the confusion and lack of information by the agencies that arranged these adoptions. One agency in York, Pennsylvania complained that the laws had changed so many times that it did not know what to tell its clients. There apparently is no oversight of these international placements which means these children are completely undefended. The damage and trauma that these children have undergone is great and one has to raise a question of liability. The same agency cited above denied that any of the adoptions disrupted but rather that the children ran away. That same agency, exasperated with the burden of a very disturbed, deazf 15-year old Native child, threatened to take the child to the Canadian border and dump her if the Native agency did not come up with immediate plans for her care. Aside from the horrible treatment many of these children receive they eventually gecome burdens in our country with funds expended for their imprisonment and financial support. Extending the protections of the ICWA to Native peoples in Canada should correct some of the maltreatment of these children. However, it is recommended that a closer look at these problems be taken and an examination of liability for the damage inflicted on these children be made. After many of these children have been abused in their adoptive homes they are simply thrown away and disowned. These practices by agencies licensed in our country must stop.

The Association accepts that social change takes time and it also recognizes that laws are passed to discipline and regulate. The amendments being proposed are necessary steps to greater clarification of the law and we hope this will continue to stimulate the kinds of practices that will ensure Indian families will no longer be destroyed.

Evelyn L. Blanchard

Evelyn L. Blanchard
Vice-President

References

American Academy of Child Psychiatry (1977). Supportive Care, Custody, Placement, and Adoption of American Indian children. Conference, Bottle Hollow, Utah.

__(1980). A Case Study Approach to Recognizing the Strengths of American Indian and Alaska Native Families. Conference, Warm Springs, Oregon.

Attneave, C. L. (1979). The American Indian child. In: Basic Handbook of Child Psychiatry, Vol. 1, ed. J. D. Noshpitz. New York: Basic Books.

Berlin, Irving N. (1978). Anglo Adoptions of Native Americans: Repercussions in Adolescence. Journal of the American Academy of Child Psychiatry, Washington, D. C.

Blanchard, E. L. & Barsh, R. L. (1980). What is best for tribal children? A response to Fischler. Social Work 35: 350-357.

Clevenger, J. (1981). Cultural aspects of mental health care for American Indians. In: Cross-Cultural Psychiatry, ed. A. Gaw. Littleton, Mass.

Fischler, R. S. (1980). Protecting American Indian children. Social Work 35: 341-349.

Goodluck, C. T. & Eckstein, F. (1978). American Indian adoption program; an ethnic approach to child welfare. White Cloud Journal, 1:3-6.

Green, B. Sack, W.H. & Pambrun, A. (1981). A review of child psychiatric epidemiology with special reference to American Indian and Alaska native children. White Cloud Journal, 2:22-36.

Green, H. J. (1983). Risks and Attitudes Associated with Extra-Cultural Placement of American Indian Children: A Critical Review. Journal of the American Academy of Child Psychiatry, Washington, D. C.

Mindell, C. E. & Gurwitt, A. (1977). The Placement of American Indian Children--The Need for Change. Washington, D. C., American Academy of Child Psychiatry.

Shore, J. H. (1978). Beyond the best interests of Indian children. White Cloud Journal, 1:13-16.

Topper, M.D. (1978). "Mormon Placement": The effects of missionary Foster Families on Navajo Adolescents. Ethos. pp. 142-159.

Westermeyer, J. (1977). Cross-racial foster home placement among native American psychiatric patients. Journal Nat. Med. Assn., 69:231-236.

-- (1979). Ethnic Identity Problems Among Ten Indian Psychiatric Patients. Department of Psychiatry, University of Minnesota, Minneapolis, Minn. 55455

New York University, Review of Law and Social Change. Symposium: The Impact of Psychological Parenting on Child Welfare Decision-making. Vol. XII, No. 3., 1983-1984.
Waters, E. & Noyes, D. M. Psychological Parenting vs. Attachment Theory: The Child's Best Interests and the Risks in Doing the Right Things for the Wrong Reasons. pp. 505-516
Stack, C. B. Cultural Perspectives on Child Welfare. pp. 539-548
Guggenheim, M. The Political and Legal Implications of the Psychological Parenting Theory. pp. 549-556
Davis, P. C. Use and Abuse of the Power to Sever Family Bonds. pp. 557-574

Indian Child and Family Services

The Indian Child Welfare Consortium

April 27, 1988

Senator Daniel J. Evans
Vice Chairman
U.S. Senate Select Committee on Indian Affairs
Washington, D.C., 20510-6450

RE: Indian Child Welfare Act Amendments

Dear Senator Evans,

Two recent Indian Child Welfare cases, the Jeremiah Halloway case in Utah and the Baby K case in San Jose, California, have made spectacular national headlines because of the controversy involved in allowing tribal courts to decide the fate of their children. Both happen to be Navajo cases, but the situation could occur in any tribe.

Tribal assertion of rights over Indian Child Welfare cases have finally brought the Indian Child Welfare Act to the attention of the public, but it is attention that has been misconstrued and is damaging to Indian people and tribes. Both cases involved non-Indian families in custody disputes over their adoptive Indian children. Unfortunately, no one, including the media, has pointed out that the Indian tribe involved in both cases, the Navajo, did what it believed best for the children. In both cases, the Tribe recognized the damage that could be done to the child by removing it from the only parents it had known and chose to allow guardianship with the non-Indian family with liberal visitation with the child's extended biological family and continued contact with the Tribe. These actions are all in keeping with the spirit and the letter of the law--the Indian Child Welfare Act.

More importantly, people must not forget what those familiar with the Indian Child Welfare Act know: that wholesale removal of Indian children from their families and heritage (25-35% of all Indian children prior to the passage of the ICWA) and their subsequent placement in non-Indian homes was highly destructive to the children's emotional health and was decimating Indian families and tribes.

Besides the anguish caused to the non-Indian families involved in the cases mentioned above, a sense of hopelessness is developing among those of us who work for Indian social service programs. We think the Indian Child Welfare Act will never work to the advantage of Indian people as long as there is no system to enforce this law.

San Diego County
(Administrative Office)
2091 E. Valley Parkway, Suite 1F
Escondido, CA 92027
(619) 747-5100

Riverside County
736 State Street, Suite 101
Hemet, CA 92343
(714) 929-3319

Orange County
12755 Brookhurst Street
Garden Grove, CA 92640
(714) 530-0221

Los Angeles County
1125 W. 6th Street, Suite 101
Los Angeles, CA 90017
(213) 977-1366

Congress enacted the Indian Child Welfare Act in good faith. Unfortunately, the Act lacks the teeth necessary to ensure it will be followed. Currently, enforcement of the law is predicated on choice rather than penalty, causing many social workers to choose not to bother with the cumbersome rules of the law.

Government leaders, social workers, public and private adoption agencies, juvenile court judges and attorneys--all who are required to follow the law--must realize that they can face criminal penalties for not following the law, for not actively seeking and identifying children as Indians when they are up for adoption or are being removed from the custody of their parents or caretakers, for not notifying the respective Indian tribes, and for not placing Indian children with members of their extended family, with a tribal member or in an Indian home approved by the tribe.

The current literature in psychology shows that Indian children who are adopted by non-Indians suffer greater problems as they reach adolescence. They have higher rates of suicide (already four times higher in the Indian population than in the general population), runaways, substance abuse, and violent deaths. This is not a good legacy for any government to leave for any of its people.

Today, those of us trying to carry out the Act find ourselves frustrated by workers at all levels in most states and counties in these United States, workers who have no cultural sensitivity and who in this pluralistic society of ours continue to operate as if we are indeed some homogenous pot of interchangeable peoples. Our strength as a nation is our difference.

We urge your support of the ICWA amendments which are currently before the Senate Select Committee on Indian Affairs. The amendments will strengthen adherance to the Act by invalidating negative court decisions concerning the Act, addressing new issues that have emerged in the last ten years, and clarifying language in the original law.

We also strongly urge the inclusion of criminal penalties to the Act. The pain suffered by the non-Indian adoptive parents and the portrayals of Indian tribes as callous and uncaring occur only because an existing federal law is violated repeatedly across this country every day and no penalties are exacted. If states and counties are not penalized in some significant way for failing to carry out the Indian Child Welfare Act, there will continue to be Jeremiah Halloway's and Baby K's. There is absolutely no reason for this to be.

Thank you for your continuing interest in the rights of Indian people and for your concern about the welfare of their children, an important element in the future of these United States.

Sincerely,

Rose-Margaret Orrantia
Executive Director

RMO:kd

SENATOR DENNIS DeCONCINI

STATEMENT

ON

S. 1976, INDIAN CHILD WELFARE AMENDMENTS

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

MAY 11, 1988

MR. CHAIRMAN, AMONG THE WITNESSES WE ARE HEARING FROM TODAY ARE TWO INDIVIDUALS WHO REPRESENT THE STATE OF ARIZONA AND THE NAVAJO NATION. I WANT TO WELCOME THEM AND EXPRESS MY APPRECIATION FOR THEIR INPUT ON S. 1976. BECAUSE WE HAVE 20 DIFFERENT TRIBES IN MY STATE THE INDIAN CHILD WELFARE ACT IS VERY IMPORTANT. THE ARIZONA TRIBES HAVE VERY YOUNG POPULATIONS. THEY PLACE A HIGH PRIORITY ON THE SOCIAL WELFARE OF THEIR CHILDREN.

UNFORTUNATELY THE FEDERAL GOVERNMENT HAS NOT PROVIDED THE NECESSARY SUPPORT THE TRIBES NEED TO RESPOND TO THEIR CHILDREN'S NEEDS. YET A RECENT REPORT ON THE INDIAN CHILD WELFARE ACT'S IMPLEMENTATION FOUND THAT INSPITE OF THE LIMITED RESOURCES AND SUPPORT FROM THE FEDERAL GOVERNMENT, THE TRIBES ARE DOING A NOTABLE JOB OF PROTECTING INDIAN CHILDREN AGAINST UNNECESSARY DISPLACEMENT FROM THEIR FAMILIES AND HOMES. THE TRIBES ARE FOLLOWING STANDARDS OF GOOD CASEWORK PRACTICE.

I WANT TO EMPHASIZE THAT THE INDIAN CHILD WELFARE ACT PROVIDES A FUNDAMENTAL BASIS FOR THE CONSIDERATION OF CHILD WELFARE CASES WHERE THE INDIAN CHILD AND NATURAL PARENT IS DOMICILED ON A RESERVATION. IT ENABLED THE TRIBES TO SET UP WITHIN ITS SOCIAL WELFARE AND JUDICIAL SYSTEMS A PROCESS FOR REVIEWING AND DECIDING THESE CASES. THIS BROUGHT INTO THE TRIBAL GOVERNMENTS A SYSTEMATIC WAY OF DEALING WITH INDIAN CHILD WELFARE CASES. IT MAKES SURE THAT STATES WORK IN CONCERT WITH THE INDIAN TRIBES ON THOSE CASES.

THE LAW DOES NOT PLACE ANY MORE BURDENS ON THE INDIVIDUALS WHO WANT TO PUT UP CHILDREN FOR ADOPTION THAN THE STATE LAW PLACES ON OTHER CITIZENS. I WANT TO EMPHASIZE THIS BECAUSE I BELIEVE THAT MANY OF THE HIGHLY PUBLICIZED CASES INVOLVING INDIAN CHILDREN MISREPRESENT THE TRIBAL GOVERNMENT'S ROLE AND THE FEDERAL LAW. WE ARE LED TO BELIEVE THAT THE TRIBE IS INTERVENING IN STATE PROCEEDINGS FOR THE SOLE PURPOSE OF TAKING THE CHILDREN AWAY FROM THE FOSTER OR ADOPTIVE HOMES OR FOR THE PURPOSE OF DENYING THE WISHES OF A NATURAL INDIAN PARENT TO PLACE A CHILD IN A NON-INDIAN HOME. THE LAW DOES NOT GRANT TRIBES THIS RIGHT. THE LAW DOES GIVE THE TRIBE THE RIGHT TO REQUEST THAT ITS COURTS BE GRANTED JURISDICTION SO THAT THE MERITS OF THE PROPOSED PLACEMENT CAN BE HEARD IN TRIBAL COURTS.

I WANT TO SUBMIT FOR THE COMMITTEE HEARING RECORD A LETTER FROM THE CHAIRMAN OF THE NAVAJO NATION, PETER MACDONALD, WHICH EXPLAINS HOW THE BABY KEETSO CASE WAS RESOLVED. HE STATES ELOQUENTLY THE REASONS WHY THE TRIBE AND NAVAJO PEOPLE BELIEVE IN THE IMPORTANCE OF CONSIDERING SUCH MATTERS WITHIN A TRIBAL CONTEXT. I BELIEVE THAT IT IS IMPORTANT FOR THIS COMMITTEE AND CONGRESS TO LISTEN TO THE TRIBE. WE MUST NOT BE SWEPT AWAY BY MISUNDERSTANDINGS.

I LOOK FORWARD TO THE TESTIMONY OF ALL THE WITNESSES HERE TODAY. I EXPECT THAT WE CAN ALL AGREE ON THE BEST WAY TO PROTECT THE BEST INTEREST OF ALL INDIAN CHILDREN.

Testimony of the National Committee For Adoption
William L. Pierce, Ph.D.
Senate Select Committee on Indian Affairs
May 11, 1988

On behalf of the Board and membership of the National Committee For Adoption (NCFA), I wish to thank you for the invitation to testify here today. NCFA is the headquarters organization of a non-profit, voluntary movement to strengthen adoption and related services. NCFA was founded in 1980. It has 140 local adoption or maternity services agencies throughout the United States in its membership. This statement does not necessarily reflect the views of all our board, member agencies or individual members. NCFA's members are all non-profit, voluntary organizations guided by volunteer board members and staffed predominantly by professional social workers.

In addition to providing technical assistance to its member agencies, NCFA works for the development of adoption-friendly policies and practices by public and private institutions. It also speaks and publishes for adoption and maternity services agencies as well as those families and individuals touched by adoption.

NCFA is supported by member agency dues, grants from foundations, corporations or philanthropists, individual member dues, contributions, and the sale of materials. NCFA currently receives no direct government funds.

Generally member agencies receive the majority of their support from fees for services. They also are supported by purchase of service contracts as well as support from private contributions and foundations.

Back when the Indian Child Welfare Act (ICWA) was being developed I was the Assistant Executive Director of the Child Welfare League of America. In that role I took part in the negotiations that brought about passage of the ICWA and, with others, sought its enactment. In 1980 I left that organization to join the newly-founded National Committee For Adoption (NCFA), where I serve as President and chief executive officer. In that role, I have had the opportunity to examine adoption in America in detail since it is adoption that our organization mainly focuses on. From this perspective I have been able to study the impact of the ICWA on adoption as it relates to the birthparents and children that are covered by the Act. Our comments are directed toward only one issue that is covered by the ICWA -- adoption. We are speaking only with respect to those aspects of foster care that specifically relate to adoption. As our organization is made up of private, non-profit agencies, we will not deal directly with the provision of foster care nor with involuntary termination of parental rights. And we freely admit that we are not experts in the complex field of Indian affairs. But we are experts in adoption -- and would like to comment on this specific aspect of the ICWA.

The Indian Child Welfare Act of 1978 should be seen as a major attempt to address a unique situation. Despite the fact that the

United States government recognizes the sovereignty of Native American tribes, at the time of enactment of the ICWA many Indian children were apparently being placed without recognition of this sovereign relationship. There is no question that some baby brokers -- either unethical private placement intermediaries or agency workers -- were taking advantage of the impoverished situation of some women on some reservations to literally purchase babies from Indian women. And there is no question that some few agencies, both public and private, and some social workers, both those working for agencies or in private practice, were largely insensitive to the needs of Indian women and children. NCFA supports the concept that the sovereign governments of Indian tribes should have a role in child welfare proceedings concerning tribal members. We disagree with some witnesses that have come before us today and at the hearings in November regarding the scope of this role and how this role should be limited. But we do believe that the sovereignty of Indian governments and the trust relationship between the U.S. and Indian governments makes the existence of a working ICWA a necessity. In fact, we would wholly disagree with some people who believe that child welfare proceedings involving some racial or ethnic groups, such as black or biracial children, should be treated in the manner similar to that in the ICWA. Such a proposal completely ignores the unique sovereign status of Indian tribal governments.

Ten years after the enactment of the ICWA, it is appropriate that these hearings take place. Our experience is that the ICWA has had some unintended consequences and that some improvements in the Act need to be made. However, we believe the direction taken in S. 1976 neither addresses those unintended consequences nor improves the act.

The Indian Child Welfare Act is inadvertently driving Indian women or women carrying babies of Indian descent into the clutches of unethical, sometimes downright criminal, private intermediaries. Frankly, this is an effect of the Act that I did not foresee ten years ago, though I honestly believe I should have. Before I elaborate, I feel, based on testimony presented to this Committee in November, that a brief discussion of the voluntary adoption process is necessary. One witness at the November hearings testified that "Private agencies are under enormous pressure to locate adoptive children for childless families...These agencies consistently show an utter disregard for the Indian Child Welfare Act...it seems the principal objective of such agencies is to get Native families out of the way so that they can meet the demand for adoptive children." The reality is different. Good, ethical adoption agencies see the pregnant young woman and the father to be, when he is still involved, as the primary client. Serving young, single or troubled would-be parents is why these agencies exist. The notion that adoption agencies such as those that are members of NCFA somehow profit from the crises facing young pregnant women is ludicrous. Today, it regularly costs an adoption agency up to $14,000 to provide a full range of services to a pregnant client. Such services include private prenatal care, accredited high school education, and maternity home care. The average fee collected from adoptive parents by our agencies in 1987 was less than $7,000. If adoption agencies were in the business of treating babies as chattel and birthparents as some sort of factories then these agencies would no longer exist. The public outcry following the inevitable media investigations and revelations would close the agencies down. But further testimony that adoption agencies exist to help women in need is found in this telling fact: at a time when even public, tax supported social service agencies are turning away pregnant minority women seeking adoption services, NCFA agencies are serving these women and placing their babies, even though doing so is creating a deficit for some agencies of up to $300,000 per year.

Our greatest concern about the Indian Child Welfare Act is that it is depriving biological parents, Indian or otherwise, of free choice. The result is devastating for Indian parents and their children. Most disturbing is that the ICWA is driving many Indian women away from the charitable services provided by good and ethical non-profit adoption agencies and into situations that are not nearly as ethical or safe. Agencies report that it is common for a Native American woman to approach an agency about adoption services but, upon hearing of the requirements of the ICWA, she disappears, never to be heard from again. One agency reports that this occurs in at least 90% of cases, and this is an agency that has approximately 50 pregnant Indian women come into its offices every year. Based on the agency's estimate of 90%, this means that at this one agency alone 45 Indian women are being forced to pass up ethical charitable services because of the ICWA.

It is the Indian Child Welfare Act that is forcing Indian women to make this decision. These Indian parents do not wish to have the tribe notified, do not wish to have their relatives notified of their pregnancy and their adoption plan. For most women this results from a desire for confidentiality. Agencies report that these women are incredulous when told that the tribe must be told about their pregnancy, and their extended family too. They do not understand why they can't make a confidential decision on their own, why they can't do so even if they are 18 or older. These women often never return to the agency. Other women "disappear" because they fear that their child could be transferred to the tribe against their wishes. While the current law does specifically say that the birthparent can object to the transfer of a child custody proceeding to the jurisdiction of a tribal court, interpretations vary on this point. The recent case that has been covered prominently in the media about the Navajo birthmother, Patricia Keetso, who had placed her child with a non-Navajo couple that she had chosen and then saw her child taken to the reservation by the tribe against her wishes, is a case in point. As this Committee is well aware, the situation on many of the reservations is such that their populations are too frequently marked by poverty, unemployment, alcoholism, and other social ills. When told of the requirements of the ICWA, and when told that other people must be told of her pregnancy, many young women express the same sentiments that Ms. Keetso did when she reportedly said "There's nothing for [my baby] there" (USA Today, 4/22/88).

When Indian women, in some cases 90%, are forced to run away from ethical social services agencies because of the requirements of the Indian Child Welfare Act, then something is amiss. We do not have to wonder what happens to these women. We know one of three things happens -- none of which tribes or backers of Indian interests support. Some end up at abortion clinics, even though this was obviously not their first choice. NCFA has no position on abortion, but we do believe that it is wrong when any woman feels compelled to have an abortion because she lacks any other confidential alternative. The result in those instances is obvious: less Indian children on this Earth.

Other women are deciding to parent their children, even though they neither wish to parent nor are they prepared to do so. The results are well documented: more poverty, more welfare, less schooling, more child abuse -- in all, a terrible prognosis for child and mother.

And other women are running right to attorneys or agencies with a reputation for being able to "finesse" the ICWA. And some of the lawyers who specialize in private adoption -- not all, but some -- are little more than baby brokers. Women run to these private attorneys because the word is out, the word on the street is clear: many attorneys are willing to ignore the Indian Child Welfare Act. So are some unethical agencies. And some of those who are helping women avoid the ICWA are well-meaning individuals or groups with a strong "pro-life" orientation who know confidentiality is a requirement if the woman is to be able to carry to term.

One of the concerns when the ICWA was enacted was that Indian women were being coerced or misled into placing their children for adoption. We believe it is accurate to say that dubious practices in adoption are more prevalent today than ten years ago and they occur commonly but not exclusively in the private adoption market. It is becoming common place for a pregnant woman dealing with a private adoption attorney to be asked to sign a "pre-adoption agreement" before she ever gives birth. These official looking agreements state that the woman agrees to place her yet unborn child with the clients of the attorney in exchange for various benefits, usually medical expenses or living expenses. While these "pre-adoption agreements" are not legally binding, to a 17 or 18-year-old young woman with no legal expertise they can be quite imposing and can be -- and are -- used to pressure young women to relinquish their children. Today, we are urging the Select Committee to amend the ICWA so it does not have the effect of driving Indian women into such situations.

We believe that there is a basic principle that ought to function in respect to all adoptions. This includes those involving members of Indian tribes, members of other racial or ethnic groups, citizens of other nations, and persons holding various religious beliefs or who are members of various religious faiths. That principle, irrespective of these and other factors (including the fact that biological parents may be adolescents), is that a biological mother (and if he is known and involved, the biological father) has the right to determine the sort of adoptive home she wants for her child. This does not mean, as in the case of either "surrogacy" or "baby-selling" schemes, that the biological parent or parents can accept money or other things of value in return for the transfer of parental rights. Nor does it mean that we approve of other inappropriate or illegal actions that some few biological parents may involve themselves in, or be led to by unscrupulous individuals. In other words, while we accept the premise that a biological parent or parents have the right to make an informed, voluntary choice of the sort of adoptive home they wish for their child, they do not have the right to accept inappropriate payments, services or benefits in return for that transfer. Children are "resources" but they are not the "property" of their parents or anyone else.

Children may not be considered "property" because they, too, have rights, and the best interests of children must be considered when there is a determination regarding where a child will live permanently (or, for purposes of foster care, reside temporarily). We recognize both the rights of biological parents to make informed, voluntary choices for their children and for those choices to be made in the context of what is in the best interests of the child.

It seems logical to us therefore, following this principle, to recognize that a biological mother and father may make a voluntary informed choice to place a child for adoption with any fit family they choose. If, for instance, an Indian couple decides to place their child for adoption with their relatives and the home is fit (and I wish to emphasize here that we recognize that "fitness" must be sensitive to cultural, racial and other differences), that decision should be honored. If they wish to bypass their relatives and place with some other fit couple within their tribe, that decision should be honored. If they wish to place with some other fit couple who are members of some other tribe, that should be honored. And if they wish to place their child with some fit couple who are not members of any tribe or who have no Indian heritage, that should be honored.

By the same token, if an Anglo (or other non-Indian) biological mother and Indian biological father determine to place their child with some fit Indian family, that should be their choice. Or that same couple may determine to place their child with a fit Anglo (or other non-Indian) family. Or an Indian biological mother and Anglo (or other non-Indian) biological father may similarly choose either an Indian or non-Indian family.

We believe the same principle should be applied to all races, ethnic groups, national groups, and religious groups. While we recognize that these racial, ethnic, national and religious groups are concerned about "losing" their children, and while we recognize the need in any transracial, transethnic, transnational, or transreligious placement to inform and teach children about their background, when it comes to a conflict between the right of biological parents to make voluntary, informed decisions about the home they wish for a child and the right of some other entity, including their own parents' interests in raising their grandchild, the laws and the courts should defer to the biological parents' wishes.

We recognize, as most members of the general public do, as most professionals involved in adoption do, that there is a subsidiary principle that also needs to be kept in mind when placing children for adoption. That subsidiary principle is that when possible, so long as the biological parents agree, the child should be placed with an adoptive family that most closely matches the family of biological origin. I can tell you that our agencies follow this principle, as do most good, ethical agencies. This principle is also tempered by the belief that a child should not wait an undue period of time for a permanent adoptive home because of these "matching" requirements, so long as diligent efforts have been made to recruit a pool of adoptive couples and other steps have been taken to find a similar home.

These principles are what guides most good, ethical adoption practice today. These principles are what makes possible the timely movement of tens of thousands of children in this country into loving, permanent homes. Most of those children, especially children born in North America, end up in "matching" homes. Many other children born in other countries, including Korea, India, and

Colombia, are adopted by non-matching families. Children in all these adoptive families are doing well. Research has shown that children adopted by racially and ethnically matching families have done well. And research has shown that children adopted by families that do not match the child racially and ethnically have done quite well, also. In fact, research into adoption disruption rates (about 15% for special needs placements nationally) has found that racial or ethnic difference between child and parents has no effect on the likelihood that a placement will disrupt. So who can argue with transracial adoptions, if the children are doing so well?

We have already addressed, albeit briefly, the issue of whether a child can be considered property, whether a child can be "owned" by a group or entity. This is an appropriate place to stop and expand upon this issue. There are some who argue that a child does indeed "belong" to, is indeed "owned" by, a racial, ethnic, or national group. Some argue that Black children "belong" to the black community, Jewish children "belong" to the Jewish community, Native American children "belong" to the Native American community/governments, Arab-American children "belong" to the Arab-American community, Puerto Rican children "belong" to the Puerto Rican community and so on ad infinitum. It is appropriate for the Black community or Jewish community or Native American community/governments or any other community to develop social services designed to serve members of that community. But we run into great difficulty when we try to determine what community "owns" a child. We run into great difficulty if we try to attach a title of ownership to every child who comes into contact with the child welfare systems. For example, who "owns" a child that is part Native American, part Black, and part Hispanic? Or part Jewish and part Native American? Or any other combination you would like to choose? We can very quickly become more concerned about what label to apply to a child than about what is in the best interests of that child. We have seen children literally grow old and "age out" of foster care because someone determined that that child "belongs" to a certain group and therefore must be placed within that group.

Bear with me while I take this argument just one step further. We must recognize the semantic difficulties around discussions of racial classification, even in the dispassionate world of statistics. Here is what Monthly Vital Statistics Report, the report of the National Center for Health Statistics says:

> "The child's race is determined from the race or national origin of the parents. When only one parent is white, the child is assigned the other parent's race or national origin. When neither parent is white, the child is assigned the father's race or national origin, with one exception; if the mother is Hawaiian or part-Hawaiian, the child is considered Hawaiian. If information on race is missing for one of the parents, the child is assigned the known race of the other parent."

In other words, the racial classification system we use to identify children is rather arbitrary, and, one could argue, biased. It is one thing when this classification system is applied to statistics and exaggerates one population over another. It is quite another when this classification system could be applied to deny, through labeling, a biological parent or parents the right to determine what sort of fit family the child should be adopted into.

We could have the situation of a child whose mother is part-Hawaiian and part-Asian and a father who is part-Indian and part-Black. That child would be called Hawaiian for statistical purposes. But the child could also be Indian for purposes of the ICWA. And the child may be considered socially Black for adoption purposes. Yet the biological parents may wish the child placed with an Asian couple, or an Anglo couple.

The Indian Child Welfare Act must clearly and sensibly determine what constitutes an Indian child, for if this is not decided then more time will be spent trying to label these children than finding homes for them.

The Select Committee must realize that there are almost daily battles going on between parents, whether they be Indian themselves or carrying a child of Indian descent, and tribes over what happens to these parents' children. For the relative few biological mothers, and sometimes fathers, who are willing to suffer the pain, the complete loss of confidentiality, to fight the tribe, these battles create months and years of impermanency for the children and heartache for the biological parents. Just because these cases do not end up in the media, the Select Committee should not mistakenly believe that they are rare. They are not. And those Indian biological parents who decide not to fight do end up aborting, or becoming young single parents, or ending up in the private adoption market on an almost daily basis.

If S. 1976 is enacted into law as it is currently written, more battles between biological parents and the tribes will break out, and more Indian women will feel forced to abort, to become single parents, or to find an unscrupulous individual or agency who will circumvent the Indian Child Welfare Act. S. 1976 would not only require that tribal governments be notified when an Indian parent wishes to place a child for adoption, but would also require that the adoption agency and the court go to extreme measures to prevent this Indian parent from placing her child. Section 102(d) of S. 1976 reads that "Any party seeking to effect a foster care, preadoptive or adoptive placement of...an Indian child under State law shall satisfy the court that active, culturally appropriate efforts, including efforts to involve the Indian child's tribe, extended family and off-reservation Indian organizations, where applicable, have been made to provide remedial services and rehabilitative programs designed to prevent such placement...and that these efforts have proved unsuccessful" (emphasis added). Not only must the agency try to actively stop an Indian parent from choosing to place her or his child for adoption but S. 1976 would require that if the agency somehow failed to stop the parent from doing so, then the tribe could take custody of the case even if the Indian parent objects. Section 101(b) states that "In any State court child custody proceeding involving an Indian child...the court shall transfer such proceeding to the jurisdiction of the Indian child's tribe...Provided further, That a parent whose rights have been terminated or who has consented to an adoption may not object to transfer" (emphasis added).

S. 1976 would remove all possibility for confidentiality for biological parents placing a child for adoption. Section 107 states that "An adopted Indian individual who has reached the age of eighteen, the Indian child's tribe or the Indian child's adoptive parents may apply to the court...[and] the court shall inform the individual of the names and tribal affiliation of his or her biological parents" (emphasis added). We strongly oppose this provision. The U.S. Supreme Court has agreed with many appellate courts that the privacy rights of biological parents must be protected. We also know from experience that given the choice between a confidential abortion and a non-confidential adoption, most women will choose abortion. Again, the result will be fewer Indian children on this Earth. We support a confidential mechanism whereby adopted persons of Indian descent can determine their tribal affiliations, as is called for in the current ICWA. We even support mechanisms like state voluntary adoption registries where biological parents and adult adoptees can meet when they both make their consent known. We do not support situations where one party can unilaterally intrude upon the life of another party, situations that would be created by S. 1976.

We believe that the ICWA needs amendments but that S. 1976 goes in the wrong direction. The ICWA should be amended so as to specifically state that a biological parent may make a request, in writing, to an authorized employee of a licensed adoption agency that neither the tribe nor anyone else be notified of her pregnancy and her adoption plan and that that request shall be honored. The

ICWA should also be amended to state that if a biological parent objects to the transfer of custody of a voluntary adoption or voluntary parental rights termination proceeding from a state court to a tribal court then such objection should automatically be honored. And we also urge the Select Committee to amend the ICWA to make it a federal crime, at a felony level, to engage in any baby selling or baby brokering activities involving Indian children and to prohibit the use of "pre-adoption agreements." Obviously, we oppose the provision in S. 1976 that specifically provides that a birthparent who has consented to an adoption plan may not object to the transfer of custody to a tribal court in voluntary adoption proceedings. Such a provision would only go further in forcing women -- Native American and others carrying babies of Native American heritage -- into choices they do not wish to make.

The current Indian Child Welfare Act has also inadvertently created situations that fail to protect the best interests of Indian children.

The current definition of Indian child for purposes of the ICWA states that an Indian child is one who is a member of an Indian tribe or who is eligible for membership and has at least one biological parent who is a tribal member. This definition has created confusion and delays that work against the best interests of children. Agencies, judges, child welfare workers, attorneys, guardians ad litem, etc. are not clear as to who is an Indian child for purposes of the ICWA. This can create delays when a judge orders further investigation to determine if a child comes under the jurisdiction of the ICWA. And, while the current law does state that the definition of parent "does not include the unwed father where paternity has not been acknowledged or established," the role of the biological father's possible Indian descent in adoption proceedings has not been clarified, again causing delay and confusion, especially when the biological mother is non-Indian.

An example of a case currently unsettled can illuminate our concern about the definition of "Indian child." (We have been asked to delete all identifying information, even the State.) The agency had worked closely with a pregnant non-Indian teenager in foster care concerning plans for her then unborn child. The young woman chose adoption. The agency attempted to work with the young woman to find the biological father. The young woman claimed to be unaware of the whereabouts of the father. The agency asked if the biological father was Indian. The young woman said that no, he was not Indian. The agency worker offered to drive the young woman from bar to bar looking for him in order to ask for his consent to the adoption. She refused, so the agency published a notice in a local newspaper hoping to locate the biological father. This was not successful and the parental rights of both biological parents were terminated under state law. Later, after the child was born, the mother of the biological father showed up and claimed that the biological father indeed was Indian and that she wanted custody of the child. Now it is eight months later. The child has spent his first eight months of life in foster care. The biological father has never been heard from. And there is no end in sight at this point, without possible, indeed probable, lengthy judicial proceedings.

S. 1976 would create even greater confusion. Section 4(5) would provide that an Indian child for purposes of the ICWA would include "any unmarried person who is under age eighteen and...is of Indian descent and is *considered by an Indian tribe to be part of its community*...[and] if a child is an infant he or she is considered to be *part of a tribal community if either parent is so considered*" (emphasis added). This will broaden the scope of the ICWA to such an extent as to create greater confusion and even more delays. The ones that will be hurt will be the children in question. Is it realistic to require that a court determine if any tribe would consider a child as "part of its community"? We think not.

For the sake of clarity, for the sake of predictability, and in order to end confusion and delays that now occur, we believe that the ICWA should be amended to state that "Indian child" be defined as a child who has two biological parents that are members of a tribe. They need not be members of the same tribe, nor need they be residents of any reservation, but they need both be members of a tribe. And in situations where paternity has neither been established nor acknowledged, then the tribal membership or non-membership of the biological mother would be the determining factor.

The current Indian Child Welfare Act provides that a biological parent may revoke the consent to adoption at any time up until the final adoption decree is entered. The specific wording is that "the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent." This means that, on the average, a consent can be revoked and the child be "returned" up to six months after placement. In some states this can mean up to a year. And given the difficulty that can occur in getting on a court docket, it can sometimes mean even longer. This provision is having a negative, inadvertent affect on Indian children who are eligible for adoption. Agencies report that many would-be adoptive parents, including Indian would-be adoptive parents, are unwilling to adopt an Indian child because of the possibility that the child could be removed at any time up to six months after placement, or even up to a year after placement. A recently completed study by CSR Incorporated for HHS' Administration for Children, Youth, and Families concluded that even where efforts to recruit Indian families for Indian children are intensive, results are "discouraging" (April 16, 1988 CSR/ACYF briefing). Given the difficulty in recruiting Indian adoptive families, it seems very unwise to maintain a provision of the current ICWA that actually works to discourage those Indian families who do want to adopt from adopting.

State laws, in an attempt to balance the need of children for permanency and the need of biological parents to make an informed decision, provide that no consent to adoption signed prior to the birth of the child is valid and that the biological parents have a limited time to revoke consent. This limited time often ranges from three days to ten days. In some states it is longer. And some state laws provide that no properly effected consent to adoption may be revoked.

We have always maintained that when a biological parent has had the benefit of professional counseling provided by an employee of a licensed adoption agency prior to signing a consent to adoption, then the ability to revoke that consent should be limited. To do otherwise creates situations where children are left in impermanence and prospective families are unwilling to adopt, much like what is happening to some Indian children and some Indian prospective adoptive families. We urge the Select Committee to examine the effect of this provision of the ICWA and to consider bringing the ICWA in line with current state laws.

There are other children being hurt, though not directly because of the Indian Child Welfare Act itself. Rather these children are being hurt because of the practices of some less than ethical individuals or agencies. Increasingly, we are getting panicky calls from adoptive parents or birth parents who have fears for the well-being of the children with Native American heritage that have been adopted -- often years ago. Just this week, I received a call from a mother of a child adopted several years ago. This family had wanted to adopt a child in need of a home, regardless of race or ethnicity, just a child needing a home. They had wanted to adopt a specific Black child waiting for a home. They were told they could not adopt the child because they were White and the child had to be placed into a Black home. But this family did adopt, though not that Black child. That child stayed in foster care for another three years. The child they adopted had an Anglo birthmother. The birthmother did a "direct placement" -- sometimes called an "open adoption" -- with them. The birthmother confided that the birthfather was Native American and lived as an enrolled member of a tribe on a reservation. On advice provided by the private adoption lawyer they went to, they never attempted to terminate the parental rights of the biological father, even though his identity and location were known. The adoption went through, but today they live in constant fear that the kinds of nightmares they read about in the national press or see on television could happen to their family. They now feel their lawyer and their "open adoption" were both examples of bad judgment on their part, but it is too late for them. It need not be too late for others, if people will heed the warning of NCFA and this Select Committee: deal only with ethical lawyers or agencies. And be wary of "open adoption" arrangments, direct placements done without the assistance of ethical and knowledgeable professionals and be wary of other negotiated conditions of adoptive placements. "Open adoptions" can easily lead to later conflict, perhaps even lawsuits filed, justly or unjustly, under the Indian Child Welfare Act, with the result being some sort of negotiated solution far short of the permanency children and families need, as increasingly seems to be the situation today. (This case was given to me on condition that I share none of the details as to location, ages, sex of child, or tribe. Given that condition, I accepted the information to share with this Committee.)

With all due respect to other witnesses who are testifying today, it is not only families like the one that I have just described who become victimized. Many Indian young women and their children become victimized by the private adoption market. It is routine practice among some attorneys to go along with or suggest a plan whereby one says that a child born to an Indian woman, or to a non-Indian woman impregnated by an Indian man, is a Mexican child, a Puerto Rican child, or a Filipino child in order to completely avoid the requirements of the Indian Child Welfare Act.

It is also routine among some lawyers to routinely ignore or finesse the rights of biological fathers, especially if the biological father might be Indian. An example, of course, is the case from Kentucky, involving a baby being taken to the Cayman Islands by the birthmother. That adoption is controversial and has drawn criticism from Kentucky and Indian child welfare groups. The attorney who arranged that adoption, David Keane Leavitt of Beverly Hills, CA, reportedly did 13 adoptions in the Grand Caymans last year. Leavitt also was quoted in The (British Columbia, Canada) Province last year about his placements to that country. Leavitt said he's placed "between 10 and 15" California babies in British Columbia in the past couple of years. The paper said, "Under California law, the father has to give permission for an adoption within the state if he's known by the mother. But if the baby is adopted by B.C.

[British Columbia] parents only the unwed mother's permission is required. In two or three cases, Leavitt, said, the natural mother travelled to B.C. to give birth just to avoid legal battles in California."

The article stated, "B.C. is a safe place for them (the birthmothers) to have their children adopted," said Mr. Leavitt.

There is even one fellow, Richard Gitelman, a man who is currently facing trial on a Pennsylvania arrest warrant, who is at this moment trying to set up an operation in the West Indies Island of Monserrat. His reported plan is to fly pregnant women into the island, have them give birth there, then fly them off without their babies and place their babies with couples willing to pay the price.

Beginning in 1972, in Stanley v. State of Illinois (405 U.S. 645), the U.S. Supreme Court recognized that unwed fathers have certain rights. Most agencies press birthmothers to name the fathers for many reasons, including their wish to see that the adoption itself will not be jeopardized later on by the birthfather challenging the adoption because his rights were not properly terminated. But lawyers such as Mr. Leavitt read the law quite differently. Here is what Mr. Leavitt said in Congressional Quarterly's Dec. 11, 1987, Editorial Research Reports, "Independent Adoptions": "Adoption agencies, according to Leavitt, misunderstood the Stanley ruling and don't realize it has been 'almost totally reversed' by the Lehr decision. The agencies, he says, 'almost invariably insist on dragging the guy in...and start trying to talk him into hanging around and paying child support and, in effect, discouraging [the mother] from doing what she wants to do, which is...separate from her child so she can get a new life started and know her baby will be safe. These agencies blow their own adoptions out the window.'"

This testimony is already too long and this issue too complex for us to discuss in details some of our other concerns with S. 1976. We do wish to list these briefly here with the hope of providing greater detail to the Committee in the future. These concerns are:

-S. 1976 would exempt Indian tribal governments from some basic foster care requirements of Title IV-E of the Social Security Act while requiring that the tribes be eligible for Title IV-E money. (Section 201(b) and (c))

-S. 1976 would create an expensive, bureaucratic and paperwork nightmare for states and private adoption agencies by requiring that states ensure that private agencies be in compliance with the ICWA for state licensing and that private agencies be audited for ICWA compliance by the state on an annual basis. This would require that limited resources needed for child welfare activities be spent preparing, conducting, and responding to these yearly audits. (Section 115)

-S. 1976's requirements for compliance thoughout the bill ignore private, non-agency intermediaries.

-S. 1976 would require that all records, reports, or other documents be provided by an adoption agency to the tribe. This will include even confidential agency documents that are not filed as part of the court proceedings. (Section 102(c))

-S. 1976 expands the definition of "Indian tribe" to include Canadian Indians which may cause greater delay and bureaucratic obstacles to the placement of children of Native American descent. (Section 4(9))

-S. 1976 fails to specify the role of the Interstate Compact on the Placement of Children in relation to tribal governments.

-S. 1976 fails to allow for confidentiality of any party to an adoption, including birthparents and adoptive parents, even when these parties so desire. Section 301(a), for example, requires that all identifying information automatically be given to the tribe by the state court.

-S. 1976 nowhere addresses the child's right to permanency and to a family.

-S. 1976 all but requires that adoptions of children covered by the ICWA be "open adoptions," adoptions that are at best experimental and which many parties would not consider adoption at all but rather a form of extended foster care. (Section 102(h))

To conclude, we wish to thank the Select Committee for inviting us here to share our views regarding the workings of the current Indian Child Welfare Act and the proposed amendments in S. 1976. When the ICWA was enacted in 1978 it represented a major attempt to recognize and involve the sovereign Indian governments in child welfare proceedings concerning Indian children. We do believe that the ICWA was a progressive development, one that was necessary due to the unique U.S. - Indian relationship. That we are here today highlighting some inadvertent effects of the ICWA and calling for some amendments to the ICWA should not be seen as a condemnation of the ICWA. After ten years of experience, it is to be expected that improvements in the Act would be necessary. As is clear from our comments we do not believe that the improvements are to be found in the direction taken by S. 1976. We do hope however that the Select Committee will examine the issues that we have raised and take action to address them in order to make the ICWA a law that indeed works for Indian children and their parents.

TESTIMONY ON S. 1976,

AMENDMENTS TO THE "INDIAN CHILD WELFARE ACT OF 1978"

MAY 11, 1988

BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

Submitted by:

Cindy Darcy and Mary Parks, Friends Committee on National Legislation

Ovanah Anderson, Staff Officer, Native American Ministries, Episcopal Church

Elvyn Ewald, Executive Director, and Allogan Slagle, Assistant Executive Director, Evangelical Lutheran Church in America, Office for Governmental Affairs

Testimony on
S. 1976, AMENDMENTS TO THE "INDIAN CHILD WELFARE ACT OF 1978"

The Friends Committee on National Legislation (FCNL) is a Quaker lobbying organization which seeks to represent the concerns of the Religious Society of Friends and other like-minded people on issues of peace and justice under consideration by the U.S. Congress. Among the issues on which the FCNL has worked during some of our 45 years in Washington, DC, is Native American affairs -- specifically the protection of treaty rights, the empowerment of Indian communities to self-determination, and the fulfillment of the federal government's legal and moral "trust responsibility" to Indian nations.

FCNL staff member Cindy Darcy is joined in presenting this testimony by Mary Parks, who from 1980 to 1987 was the legal counsel for the foster care and adoption program at the Seattle Indian Center in Seattle, Washington. Our testimony also represents the support of representatives of the National Episcopal Church and the Evangelical Lutheran Church in America. In addition, we understand that a number of individuals involved in Indian child welfare work, like those listed at the end of our statement, would like to associate with the views presented in our testimony. We ask the Committee that their letters of association be included as part of the hearing record.

Grim statistics and saddening stories presented in the mid-'70s to the Senate Select Committee on Indian Affairs, then under the leadership of Senator Abourezk of South Dakota, prompted Congress in 1978 to pass the "Indian Child Welfare Act" (ICWA). As many as 2,000 Indian children per year were being separated from their natural families by non-tribal public and private agencies, and placed in non-Indian foster and adoptive homes. A minimum of 25 percent of all Indian children are either in foster homes, adoptive homes, and/or boarding schools. Some 25% of all Indian children taken from their natural homes was in contrast to 2% for the general population. About 85% of those Indian children were placed with non-Indian families. Whereas non-Indian children were taken out of their natural homes at a rate of 1 of every 51 children, Indian children were being removed at rates from 5 to 25 times higher.

The major thrust of the "Indian Child Welfare Act" is to decrease the number of children removed from Indian homes by providing services designed to increase family stability and strengthen those families, and to place decision-making about child placements within the traditions, value systems and cultures of the child, family and tribe. Under the Act, if it is necessary to remove a child from his or her parents, he or she is to be placed with the extended family, with members of that tribe, or with other Indians, in a home which will reflect and encourage the values of Indian culture, in order to maintain a sense of tribal identity. While the Act does not prohibit the adoption of Indian children into non-Indian families, that placement is allowed only after the failure of efforts to address any temporary problems of the immediate family, and to place the child in a culturally appropriate home. The role of the tribe -- especially tribal courts -- rather than the state or the federal government, is affirmed as the primary authority over the welfare of Indian children. The Act seeks to strengthen tribes' handling of legal matters of parent-child adoption and foster care proceedings, and to ensure that the child's family and tribe are included in procedures.

Acting in the best interests of a child means chiefly providing a stable and loving environment for the child to grow up in. In the case of an Indian child -- and we would broaden this to suggest, in fact, the case of any child of color or of a minority group -- special consideration needs to be made to provide for that child as Indian. Native Americans are people who have traditionally identified themselves as a community; to be an Indian is to be a member of a tribe. Therefore, acting in the best interests of an Indian child means ensuring that his or her community is involved in that child's life to a great extent. Furthermore, the extended family and tribe are closest to that child, and therefore have the best sense for making decisions about the child's welfare. The tribe, in passing on the rich history, language and traditions of that community, is vital in building self-esteem and helping the Indian child know who he or she is. And it is the children who ensure that those traditions and that culture continue.

Instability in Indian families is not inherent to the families themselves, but a product of federal and other policies which have sought to deny or obliterate tribal structures, value systems and cultures, and assimilate Indian people into the "mainstream" of society. Especially for this reason, we see S. 1976 as part of a journey toward true recognition of and self-determination for Indian communities. We appreciate the other several initiatives in the 100th Congress which also seek to address the conditions which lead to family instability and social problems in Indian country: economic development, housing, Indian health care, education. Because these measures, like S. 1976, represent solutions which come from the people, brought to Congress by tribal representatives, or developed with significant input from Indian country, we feel that these initiatives have the best opportunity to benefit the people.

Many of the additions S. 1976 would make to the original Act make sense from the standpoint of good social work practice, and are already in effect in some states, for example, in Washington. These states have followed the spirit rather than the letter of the Act, even where certain things have not been required under an exact reading of the original Act. However, given that different states perceive and interpret the Act differently, we appreciate the thoroughness of the Amendments to make the Act clearer and more consistent throughout. Secondly, in a number of instances, S. 1976 revises the original Act to make it clear that responsibility and authority clearly rests with the tribe.

Findings: One point, which in a way becomes a sort of statement in the Amendments, is "Finding 6," which points out the Bureau of Indian Affairs' failure both to advocate for tribes in adoption and foster care placements, and to seek adequate funding for the implementation of the Act. This is a sad commentary on ten years of administering a very significant piece of Indian affairs legislation.

Declaration of Policy: We appreciate Congress' intent to protect the interests of Indian children not just in the "removal of Indian children from their families and the[ir] placement in foster or adoptive homes," but indeed from any interference in that child's relationships with parents, family and tribe. It is as though in the Amendments, Congress truly takes off on what was the spirit of the 1978 Act, but not so explicitly said: that in Indian cultures, "family" is more broadly defined than in the dominant society; that children are vital to their tribal societies, and tribal governments have both the right and responsibility to be involved in adoptive and foster care placements at every step of the process; and that the survival of the tribe and the wholeness and identity of the children themselves depends on the keeping of strong ties to that Indian community.

Definitions: We appreciate that under the Amendments, "domicile" and "residence" would be defined according to tribal law or custom. Here also it is recognized that a "qualified expert witness" best able to provide information for decisions surrounding a child's placement might not possess the "credentials" the mainstream society looks for, but be known and respected by the tribe for their wisdom. This new language, and other new sections throughout the Amendments, intends to do two things: One, to make the Act relevant and "fitting" for the people it was enacted to serve, rather than make the people fit the dominant society's set of laws and definitions and customs, and two, to underscore the primacy of tribal jurisdiction. The manner in which these two principles are applied throughout the Amendments makes S. 1976 an exciting and empowering piece of legislation.

We are pleased to see that the definition of "Indian" here explicitly includes members of terminated tribes, who often have found themselves in an unclear status as a result of federal policy experimentation during the "termination" era.

TITLE I

Section 101 (a): Here we note a small but significant word change from the 1978 Act: the addition of the word "concurrent." Here again is the primacy of tribal authority. The tribal view and the prevailing view has been that the the state never does have and never has had exclusive jurisdiction over any tribal matters. The situation has been in need of clarification, however, and the addition of the word "concurrent" in the Amendments is an attempt to make clear that when Public Law 280 vested jurisdiction in the state over certain areas of law, it was concurrent and not exclusive jurisdiction. Tribes, of course, originally had exclusive jurisdiction over all matters of concern to them; they lost exclusive jurisdiction over certain areas of law when legislation was enacted giving states concurrent jurisdiction over those areas. The Act provides a mechanism for retrocession to the tribes of exclusive jurisdiction over those areas.

(c): The Act held up and affirmed the rights of the child's custodian, parent and tribe to intervene in state child custody proceedings and placement review proceedings. While we feel that this was intended under the 1978 Act, language to expand that intent and to emphasize participation and Indian parties' rights will serve to ensure Indian control in the process. Enabling a tribe to authorize another tribe or Indian organization to intervene on its behalf makes meaningful a right of intervention/participation that otherwise has little meaning to a tribe that may be geographically far removed from the state court where proceedings are taking place, and/or may have limited resources.

(d): This language affirms a tribe's involvement at the early stages, even when no court hearing is scheduled or anticipated, e.g., if a case file has been opened in regard to a family and the family is being monitored and investigated because of a complaint filed with Child Protective Services. This can be an extremely crucial stage in providing (or not providing) services and efforts needed to keep the family together and help it to function well.

(e): The thrust of this language here is to ensure that tribes are not penalized for their differences -- such as practice and procedure of a tribe surrounding Indian child custody proceedings. Again, while we regret that such must be spelled out in the legislation, we are grateful for Congress' efforts to protect the uniquenesses of Indian communities, and their right to do things according to their own value systems and leadings.

Section 102 (a): Clarifying language here serves to make the notice requirements more specific and comprehensive, and to insure that the notice required by the Act "reminds" all parties of the underlying right to have proceedings transferred to tribal court. While some states have operated under a procedure whereby the notices sent out inform tribes and parties of their right to petition for transfer of jurisdiction, the Amendments incorporate such good practice and makes it universal. We appreciate the thoroughness of the Amendments to close up possible loopholes under which this important provision of the original Act can be avoided.

(d): It is indeed appropriate that not only active but "culturally appropriate" efforts, which will involve the tribal or an Indian community, are undertaken to strengthen or restore family ties. The thrust of this legislation must be on keeping Indian families together. This section sets this principle forth by requiring that such efforts be made to the satisfaction of the court first, before any other proceedings may be begun. Again, this is in our estimation the heart of the Act: providing services to prevent the need for out-of-home placement respects that the family is of ultimate value.

(g): One issue we particularly applaud for being addressed in the Amendments is the strengthening of the "evidence" section. Because of poverty and discrimination, Indian families face many difficulties, but there is no reason or justification for believing that these problems make Indian parents unfit to raise their children. Furthermore, as has been stated in congressional hearings, irrespective of the physical or mental condition of the child's parents, the trauma caused to a child by removal from their natural family is far worse.

Children have been taken from their homes on the basis of vague standards such as deprivation, neglect and poverty, rather than on the basis that these children are suffering emotional or physical damage at home. Under past attitudes, if children on some reservation lacked adequate food and clothing, rather than bring food and clothing to them, they were taken away to the food and clothing.

Welfare workers, and those making decisions in child welfare matters, might misinterpret conditions found in an Indian home, looking through the eyes of middle class or dominant society standards -- Is there plumbing? What is the home's square footage? What is the family income? -- without a proper understanding of the cultural and social premises underlying Indian home life and childraising. For example, seeing a young child being cared for by an older brother or sister, or an aunt, is interpreted as neglect, rather than a cultural pattern of sibling responsibility or the extended family.

Furthermore, there have often been cultural differences in removing children from their homes for placement elsewhere. The concept of adoption is not generally accepted by Indian people because children are always provided for, if not by the "immediate" family, then by the extended family and the tribe that Indian people consider their family. Furthermore, Indian children are received as a gift, to be treated well and cared for by everyone. Like the earth, children cannot be owned by anyone. Then, if a family is served papers about a adoption proceeding, how is paper able to terminate parents' rights? Indian parents have sometimes signed papers giving up their children, not understanding what the effect of the signing is, because it is so foreign to their way of thinking that one can "own" or "give up" a child through paperwork.

Just as it was not clear in 1978 that conditions of poverty, etc., were harmful to a child, we are pleased that language now spells out that harm must clearly be shown. Different cultural standards are not sufficient reason to take a child from his or her home, and neither is poverty. We are pleased to see that fact laid forth in the Amendments. Evidence must show the "direct causal relationship" between conditions in the home and harm to the child. This is a crucial point that needed clarification. We hope that this language will have the effect of lessening interference with the Indian family.

(h): Even after the '78 Act, state courts have been set up to shroud adoption and foster care proceedings in secrecy, in the name of "protecting" the child. For the following reasons, we support this provision which allows a child to learn about his or her identity and tribe to the "extent possible and appropriate."

Again going back to a value traditional in Indian that a child cannot be "owned," we recall the words of the poet Kahlil Gibran, in a famous passage from The Prophet:

> "Your children are not your children. They are the sons and daughters of Life's longing for itself. They come through you but not from you, And though they are with you yet they belong not to you. You may give them you love but not their thought, For they have their own thoughts. You may house their bodies but not their souls, For their souls dwell in the house of tomorrow, which you cannot visit, not even in your dreams."

Therefore, no child should ever be cut off completely from his or her heritage, from the past that does so much to enrich his or her life. Not only does this honor a traditional value of Indian culture, but makes good practical sense, so that there are remaining ties to re-connect with the natural family in the vent that the adoption fails, as sometimes does happen.

Section 103 (a): One would hope that in explaining consent proceedings, the "Indian Child Welfare Act" would also be explained. However, it seems wise to have "safety" language added, as has been done here.

(2), (3) and (4): These new sections around voluntary proceedings make clear the provision of notice to the tribe, the right to intervene and transfer to tribal court, and requires "culturally appropriate" efforts to keep the family together. In addition, the language of the Amendments recognizes that an Indian parents' motive in consenting to a child's placement may constitute nothing like "abandonment." Furthermore, this section allows for revocation of the process and the withdrawal of consent to foster care placement, termination of parental rights or adoptive placement at any point, and immediate return of the child to the parent or Indian custodian, except where return would cause harm to the child. This is important, because consenting to voluntary placement is not necessarily an indication of bad parenting, nor is it evidence that a child is in danger of harm. Sometimes, giving consent to placement indicates parents' responsibility in recognizing when things are over their head, when they need help. Families may be unable to care for their children for a temporary period, only, and problems may be correctable. This section seeks to protect above all the primary family relationship, and the right to restore that relationship, rather than making the process of the proceedings sacrosanct.

Section 104: This provision has been broadened from the Act so that it sets forth specific remedies and procedures for vacating decisions and proceedings that do not confrom to the requirements of the Act. The original Act provides no remedy when the placement standards are not adhered to. The Amendments correct this very serious oversight.

Section 105 (a): This language establishes the tone of the placement section by putting up front that the child's and the communities' rights as Indians are the fundamental rights to protect. The elimination of the phrase "absent good cause to the contrary" closes a huge loophole which has permitted state courts to ignore the placement standards entirely for any reason they choose. We appreciate the substitution for that vague, wide-open language of the specifics set for in (d) and (e), which give courts useful direction in carrying out the intent of the Act.

(b) and (c): As elsewhere in the Amendments, the primacy of the tribe is recognized by giving priority to an order of placement established by a tribe, without the tribe being required not to pass a resolution regarding such.

(e): The issue of confidentiality is an important one. We support the new language which recognizes that a tribe is able to handle a request for confidentiality, understanding that in some cases a parent who is a tribal member might not wish it to be generally known that they had placed a child up for placement. This language respects the rights of the individual while also honoring those of the community -- and the primary relationship of a child to his or her tribe. A request for confidentiality is not a matter in which an individual's rights can become paramount to the child's and tribe's interest in maintaining a child's connection and ties to that community.

(f): Rather than require tribes to fit into state law and process, this language requires states to recognize the uniqueness of foster homes serving Indian children. This recognizes that the state may not be the most appropriate party to determine standards, but places authority in the community's hands, by allowing tribes to set their own culturally-relevant and specific standards.

(g): It is often not enough to tell an agency "You must make an effort to do this or that," but it is necessary to spell out just what minimally constitutes such an "effort." We appreciate the clarity of the language here, and believe that it will result in better compliance with the order of placement.

Section 106 (a) and (c): Another example of thoroughness of these Amendments is language providing that if a child who has been adopted is later placed in foster care, or when a child is removed from foster care for another placement, the tribe will be notified, and has the right to intervene. This language recognizes the rights of the biological parents and the tribe anew, after adoption, and that those rights are continuing ones which need to be respected at every stage of the proceedings concerning the child.

The provision in (a) for notice to be given to the biological parents, prior Indian custodians and tribe when an adoption fails is new and makes much more meaningful the existing right to petition for return of custody. The same is true in (c) in regard to making existing rights meaningful. We appreciate the recognition the Amendments give to the crucial importance of the notice requirements.

Section 108: We appreciate how the addition of the word "concurrent" here makes very clear that under the 1978 Act, tribes had concurrent jurisdiction with states over their children.

(b)(2): The term "referral jurisdiction" is a flaw in the existing Act. Tribes already have concurrent urisdiction even in P.L. 280 states, and the Act already provides a clear mechanism for cases to be transferred/referred to tribes by state courts in 101(b). So Section 108 (b)(2) as it now stands with its reference to "referral jurisdiction" is confusing and redundant. The Amendments state that in cases where full retrocession of exclusive jurisdiction is not feasible, then the Secretary can retrocede to tribes exclusive jurisdiction over limited community or geographic areas.

Section 109 (a): This clarifying language assures that in entering into an agreement with the state, a tribe's powers will in no way be decreased. Given the skittish attitude of many tribal governments with regard to state government, we believe that this language may provide assurance for tribes to enter into such agreements. While federal law and policy is important, we also recognize the need for solutions around implementation of ICWA to come from the local level, where, as in the case of the Washington state-tribal agreement, the partnership generated by problem-solving together laid the groundwork for the success of the agreement. We are pleased to see this new section.

Section 112 (b): This section is necessary to address an imminent danger. In some states it is possible for a social worker to go to court and obtain a "pick up order," which allows the worker to remove a child from his or her home without a hearing. Specifics of language offered in the Amendments would tighten what has been a big loophole in procedure. We would question, however, whether or not the language is specific enough.

This language would assure that if a child taken from his or home family because of emergency placement, state court proceedings will begin within ten days if the child is located off-reservation, or the child will be transferred to the jurisdiction of the appropriate tribe if he or she is located on a reservation. This assures that the child is not in a limbo for a long period of time, and that active efforts to end that out-of-home placement begin as soon as possible.

Section 114: The creation of Indian Child Welfare committees is another example of how the Amendments recognizes tribal authority and facilitates opportunities for community initiative, without requiring it. While the language of the Amendments does not say what the make-up of the committees will be, because the membership will be chosen from a list submitted by tribes themselves, we assume that such committees will have relevance to the people they are designed to serve. Testimony at the November, 1987, oversight hearing indicated that the issue of compliance is one that needs addressing, so we are pleased that the Amendments provide such a monitor, and draws in resources from the community involved.

Section 115: This new section builds in a mechanism for enforcement of the Act, by requiring private child placment agencies to comply with the Act if they are to continue to be licensed. Again, while some states have honored the letter and spirit of the "Indian Child Welfare Act," testimony indicates that some states, perhaps most notably Alaska, have used unclear language and loopholes in the Act to avoid compliance.

Especially given the problem in Alaska, even though Alaska Natives are included in the definition of "Indian," we would like to suggest that this section be amended to include specific reference to Alaska Natives, which extend beyond "Indian tribe" and "Indian population" to Aleuts and Eskimos. We only suggest this clarifying language because the Amendments so carefully seeks to close any ambiguities or loopholes in the '78 Act.

Section 116: Native peoples travelled the breadth and width of their Native homelands freely before international borders were imposed on those lands. We appreciate the new section that addresses the unique situation of Canadian Indians, and acknowledges that "our" borders may not necessarily be "their" borders. Tribes who were signators to the Jay Treaty and tribes who live along what is now the U.S.-Canada border should not be denied either services or the right to benefit from the spirit of the Act because of an external boundary imposed on them.

TITLE II

Again, we would like to note that the provision of Indian child and family programs is designed to prevent the breakup of families so that removal of a child from his or her home is done only as the last resort. Adequate time must be spent searching for and considering options to adoption and foster care.

Section 201 (a)(3): We note here the inclusion of new and very appropriate language to include "cultural activities" among the family service programs. We support this language which recognizes the vital, unifying and strengthening place of culture in Indian communities.

(c): This language recognizes that just because tribal programs and standards are different from state or other agency programs, they can in no way be interpreted as inferior. To judge them so, and insist on tribes adopting another modus operandi is discriminatory at best, and racist at worst. We appreciate the addition of language in this section which recognizes the appropriateness of tribal standards for monitoring and reviewing the programs under this section.

Section 203 (b): Finding Number 6, mentioned earlier, highlights the issue of the need for adequate funding for implementation of the "Indian Child Welfare Act." We are concerned not to find this later section of the Amendments statutorily addressing this concern in a more substantive way. We noted at the November oversight hearing on ICWA that witnesses one after another mentioned the problem of funding. There has never been enough money to carry out the purposes or programs of the "Indian Child Welfare Act." Witnesses for the Bureau of Indian Affairs commented that the BIA funds only half of the total number of tribes and organizations which request funds, and only monitors some 10% of its ICWA grantees. We also recall that Chairman Inouye pressed witnesses for what an adequate funding level would be, and regret to see no specific authorization level laid forth in the bill. When FCNL presented testimony before this committee in 1977, one of our chief concerns then was funding level.

We applaud the added emphasis in S. 1976 on tribal courts being the place for cases to be considered. However, we realize that this may well result in an increased work load, and urge that congressional appropriations provide adequately for technical assistance, child and family services and other programs. The lack of adequate funding has hampered tribal, state and private agencies in providing the best protection for Indian children.

While we are critical that funding is not addressed more comprehensively, we think it most appropriate that additional funds may be provided for training, as provided here, given the importance of education and training about the provisions of the '78 Act, and the need for such training especially among non-Indian employees, as tribal workers have indicated.

TITLE III

Section 301: Here, as elsewhere in our testimony, we remark gratefully on the consistency of the Amendments in assuring tribal notice of a states final adoption decree, disclosure of information by the Secretary about a child's parentage for purposes of tribl membership, and an annual listing from each state of all Indian children in placement, which will be provided to that tribe.

****

In closing, we would note the attention the Indian child placement issue has gotten recently in the case of a young Navajo mother who wished for her daughter to be raised by a non-Indian couple. It is our feeling that Indian people who wish they were not identified as Indians, because they themselves do no identify with their tribe or as a tribal member, and who therefore do not want their child to be raised as part of an Indian culture, may present a unique situation under ICWA. Does a child "belong" to his or her community? We feel now, as ten years ago, that it is only wise to recognize tribes' authority and role in the welfare of their citizens, even though there may be times when such authority is a problem for a parent, rather than allow the state to assume control. Tribal courts are better able than state courts to consider and weigh all the factors that affect the Indian child, and to make decisions that are in the be longterm interests of the child.

The reflection of Calvin Isaac, tribal chief of the Mississippi Band of Choctaw, offered at a hearing before Sen. Abourezk's Committee 10 years ago on legislation which became the "Indian Child Welfare Act," still rings true: that the chance for Indian peoples to survive, and the continuing ability of tribes to govern their own communities, rests with the children -- to whom tribal heritage is transmitted -- being nurtured by their own people and brought up in the ways of their people. S. 1976 seeks to provide further strengthening of Indian family and communities. We strongly support this legislation, and look forward to its consideration by the full Senate.

Indian Child Welfare Act:

May 21, 1988

Sign-up Sheet

Name address phone number

Barbara M. Kitchell 223 Pollasky, Clovis 297-1042
[illegible] 1707 Dorcas Visalia
Caleen Sisk 1226 Jackson St. 916 895-6831
INFO - Martha [illegible] 1420 N. Encina Visalia Ca 93291
Inform - Marie D. Wilcox 34787 Rd 197 - Woodlake, Ca. 93286
Susan Paulino 3440 E Grant #B Fresno, Ca 93702
Carol Kipp P.O. Box 456 North Fork 93643
Vic White PO Box 409 Davis, Ca 95617
Elsie [illegible] 1005½ N. Divisadero 93291
Helen Routh Rt. 1 Box 865 Delano Cal. 93215
Ilene Cape P.O. Box 705, Auberry, Ca 93602
Delcie Davis P.O. Box 217, Auberry, Ca 93602
info Jill Ward 822 West St., Redding, CA 96001 (916) 243-5307
info Charlene Ward 605 Iris Dr #A, Redding CA 96002 (916) 222-8805
Marta Frausto 112 E. Hawes St. Fresno, Ca 93706 268-0497
Lois Martin 5017 Chowchilla Mtn. Rd Mariposa, CA 95338
Frannie Gann 4710 Bay Tree Ln. Mariposa CA 95338
Beverly McCombs 3395 E Fairmont #D 93726
Jane Wyatt P.O Box 708, Coarsegold, Ca 93644
Marcia Scheidt 3330 E. DAKOTA #113 Ca. 93726
[illegible] 3330 E Dakota #113 Fr Ca 93726
Chris [illegible] 4835 [illegible] Fresno Ca 9372[illegible]
CALEEN A. SISK [redacted] 1226 JACKSON ST CHICO 95928 (916) 895-6831
[illegible] M. Ward 605 iris Dr

Law

The Battle over Baby K.

Native Americans resist adoption of their children by non-Indians

Keetso, right, a Navajo, wants the Pittses to adopt Allyssa

But on the reservation, there are fears of a baby drain

Not all custody battles involve contending parents. The fight over a nine-month-old girl named Allyssa is a classic clash of cultures. The mother, Patricia Keetso, 21, is an unwed Navajo Indian who would like her daughter to be adopted by Rick and Cheryl Pitts of San Jose, who have been caring for the baby since birth. But tribal officials, fearing that the flow of Indian foster children to non-Indian homes threatens their survival as a people, are seeking to rear the baby on their Arizona reservation. The emotional case has become a symbol of tribal resistance to the baby drain.

Keetso and the Pittses were brought together through San Jose lawyers who arrange adoptions. She lived at the couple's home for three months before giving birth last July. But in April, Navajo officials, who refer to the child as Baby K., convinced a California judge that any decision about custody should rest with the tribal courts. At a hearing last week, a tribal judge in Tuba City returned Allyssa temporarily to the Pittses, but a final decision is still pending.

The case has produced its share of wild scenes, charges and countercharges. At a Phoenix airport two weeks ago, a hysterical Cheryl Pitts chased after Navajo social workers who she claims seized the child and spirited her away to the reservation. Keetso and the Pittses charge that Navajo officials violated an understanding that Allyssa would be placed solely in the care of her maternal grandmother until the hearing. Instead, they say, the child was left in the home of a stranger, where she was neglected and quickly fell ill. Tribal authorities deny that such an understanding existed and contend that the baby's illness was due to a change of formula.

The battle over Allyssa is in part a legacy of the 1978 Indian Child Welfare Act, a federal law that has been invoked in thousands of custody disputes. It empowers tribal courts to make custody and foster-care decisions in most cases involving American Indian children. A large proportion of such youngsters are in the care of adoptive or foster parents, a situation that results partly from a high incidence of teenage pregnancy, parental alcoholism and out-of-wedlock births on the impoverished reservations. Before the 1978 law, it was common for state courts and child-welfare agencies to place Indian children with foster and adoptive parents who were not Native Americans.

The outflow led some tribes to fear for their cultural survival. Studies conducted in 1969 and 1974 found that between 25% and 35% of American Indian children were placed in institutions or in adoptive or foster care, mostly in non-Indian households. It was not unheard of for social workers to take children away from their parents "simply because their homes had no indoor plumbing," says David Getches, an expert on Indian law at the University of Colorado. Because it has discouraged such abuses and kept more Indian families together, says Getches, the legislation is a "success story."

But an imperfect one, say some Indians. State courts can retain decision-making power in custody cases by invoking a "good cause" provision—for instance, if there is reason to believe the child might be neglected or abused on the reservation. That provision is interpreted too freely, says Attorney Jacqueline Agtuca, an Indian advocate at the Legal Assistance Foundation in Chicago.

On the other side, non-Indian critics of the law charge that it permits tribal courts to remove Indian children from foster homes where they have lived happily for years. They complain that it allows tribes to lay claim to children who have never lived on a reservation, simply because one of their parents is part Indian.

Ironically, the would-be adoptive father of Baby K. is one-quarter Indian, of the Tarascan tribe of Mexico. He claims that he would see to it that Allyssa is not entirely deprived of her heritage. But for Rick Pitts, when he imagines the child growing up on the reservation, the images of poverty blot out the virtues of cultural identity. "Look at the houses, look at the shacks," he says. "Most likely she'd grow up, get disgusted, leave and never come back." Last week Allyssa awaited her fate wearing a layer of sweet powder. A Navajo medicine man had covered her with it during a ceremony performed to expel evil spirits. Perhaps it will protect her from the injuries of a bitter custody fight. —***By Richard Lacayo.***

Reported by Scott Brown/Tuba City and Elizabeth Taylor/Chicago

isco Chronicle Thursday, April 21, 1988

1978 Indian Child Law Evolved From a 'Horrible Situation'

By Michael McCabe
Chronicle Staff Writer

The anguish and confusion surrounding the custody case of a Navajo baby was born out of a controversial 1978 law aimed at halting the breakup of Indian families.

After thousands of Native American children were taken from their families and placed in foster care or put up for adoption, Congress passed the Indian Child Welfare Act, which allows tribal courts to decide custody cases involving Indian children.

"All kinds of Indian children were being placed in foster homes or adopted because their parents' rights were being terminated," said Rick Dauphinais, deputy director of the Native American Rights Fund in Boulder, Colo. "They were being taken to places like Los Angeles and Seattle, and Congress said we need to get them back to the tribe, if possible."

Adoption Statistics

According to a House committee report leading up to passage of the Indian Child Welfare Act, in 1974 up to 35 percent of all Indian children were separated from their families and put in foster homes, adoptive homes or other institutions.

In some states, such as Minnesota, 90 percent of adopted Indian children in 1978 ended up with parents of other races, according to a congressional report.

"The law was in response to a horrible situation," said Stephen Pevar, an American Civil Liberties Union lawyer in Denver and author of the book, "The Rights of Indians and Tribes."

"Congress held months of hearings and found that thousands, if not tens of thousands of Indian children were being taken off the reservation and placed in non-Indian homes, sometimes for well-intentioned reasons, sometimes not."

Quality of Life

Indian children often were removed by local welfare agencies for what Pevar said were "racist" reasons — the assumption that the quality of life off the reservation was always superior.

"Sometimes that is true, but if that is the standard, then the government can remove every ghetto child in the United States and put that child elsewhere," said Pevar, who teaches Indian law at the University of Denver Law School. "The standard has never been where the child will get the best care, but rather whether the child's health and welfare is being threatened by staying on the reservation."

Many who testified before Congress in support of the Indian Child Welfare Act cited case after case in which Indian child-rearing practices were often misinterpreted.

What is labeled "permissiveness," for example, may often in fact simply be a culturally different but effective way of disciplining children, said William Byler, in [illegible] book, "The Destruction of American Indian Families."

"Ironically, tribes that were forced onto reservations at gunpoint and prohibited from leaving without a permit are now being told that they live in a place unfit for raising their children," Byler said.

Behind the Adoptions

Why are so many Indian children put up for adoption?

Many young Indian women — and men — do not want their children raised in a poverty-stricken environment that all too often is "predictive of failure," said William Pierce, executive director of the National Committee for Adoption, a nonprofit education and research group based in Washington, D.C.

Since the law was passed, Indian tribal leaders have increasingly resisted allowing children — part of the tribe's extended family — to be adopted.

Under the law, the general criteria is not where the child was born, but whether the mother or the father has lived on a reservation.

Law's Critics

Not surprisingly, the 1978 law has many critics, including Pierce of the National Committee for Adoption.

"It is a terrible disaster," Pierce said yesterday. "This is the kind of thing that could destroy all transracial adoptions if you have this precedent that the child belongs to the minority group.

"The reason this whole issue is so damned sensitive is that there's this tremendous empathy for the plight of the Native Americans in our society. It's very unappealing for anybody to be on the other side — you know, 'First we steal their land, now we steal their kids.' "

Allyn Stone contributed to this report

Arizona Republic
Saturday April 23, 1988

IN FOCUS

Child law tries to fathom tribes

By Chuck Hawley
The Arizona Republic

A cultural gulf divides Indians and their Anglo neighbors like the still spaces between stone pillars in Monument Valley.

Within that gulf are thousands of children who have been born into one culture and thrust into a second, only to be pulled upon by forces from both.

Babies born to American Indian mothers have been removed from their families at a higher rate — 25 to 35 percent — than any other group.

Of those babies, 85 percent were adopted by non-Indian families, according to information compiled by the Indian Justice Center in Petaluma, Calif., in 1985.

It was such testimony before congressional subcommittees that led to passage of the Indian Child Welfare Act of 1978, which gives tribal governments the final word on placement of Indian children.

"There is no resource that is more vital to the continued existence and integrity of Indian tribes than their children," the law says.

Craig Dorsay, a lawyer in Portland, Ore., helped draft the Indian Child Welfare Act. He has written a textbook on its operation, handled related court cases in 26 states and has conducted more than 100 training sessions for tribal workers and social-service agencies.

Asked if the law works, Dorsay acknowledged there have been "mixed results."

"There are some states that are very good with the act, such as Arizona, and others that are not," Dorsay said.

"It's no different from laws against baby-selling which are common in every state. But in this case, the figures leading up to the act show that Indians were losing more than a quarter of their children."

Dorsay said that how well the law works is dependent on the background of the participants and the willingness of non-Indian judges to recognize tribal rights in determining the placement of Indian children.

Some lawyers who go to court for Indian adoptions have never even heard of the law, he said.

"You'd be surprised the number of times I get calls from lawyers who say they are going into court in five minutes with a case," he said. "They say they just heard of the law and ask me to explain what it is and how it works."

• • •

Attempts to enlighten people unfamiliar with tribal customs seem almost impossible.

Sociologists describe two basic kinds of families: nuclear and extended.

In non-Indian society, the traditional family is nuclear; in Indian society, it is extended.

A nuclear family consists of parents, children and sometimes grandparents, but the unit generally is limited to those people directly related by blood and living under one roof.

In a nuclear family, parents are perceived as the ultimate authority for their offspring. Even close relatives attempting to interfere with that authority are met with stony stares or sometimes curtly told to mind their own business.

Tim Rogers/The Arizona Republic

Cheryl Pitts (left) takes baby Allyssa from the child's natural mother, Patricia Keetso. Keetso, a Navajo, wants Cheryl and Rick Pitts to adopt the baby, but a Navajo court will make the final decision on permanent custody, as the case falls under the Indian Child Welfare Act.

Indian adoption, placement facts

- 25 to 35 percent of Indian children are removed from their families.
- 85 percent of Indian children removed from their homes are placed with non-Indian families.
- There are 2.7 times as many Indian children in foster-care homes as non-Indian children.
- Federal law requires that tribal courts be notified about any adoption proceeding involving an Indian child.
- A tribal court may intervene in a custody proceeding at any point, under federal law.
- By tradition and tribal law, an Indian grandmother has rights equal to a mother's in child-custody questions.
- "Indians raised in non-Indian homes tend to have significant social problems in adolescence and adulthood," to the American Academy of Child Psychiatry said in a 1975 report.

Source: National Indian Justice Center at Petaluma, Calif.

The extended family is a larger concept that involves aunts, uncles, cousins and almost everyone else related by blood.

An Indian child, for instance, could move in with a cousin for an extended period of time if necessary, without fear of creating an imposition.

Such an occasion may arise when the child's immediate family has experienced a crisis.

The Navajo language, in which Navajos call themselves Dineh, or "the people," provides a clue to the difference.

The Navajo phrase for "my mother" is shima. The phrase for "my aunt" is shima yahzi, or "little mother." The added yahzi implies the role of an adjunct mother who can be called upon by other family members.

The closeness of the words leaves little doubt that the parental authority of a mother can readily be extended to an aunt when needed, according to Navajo tradition.

In many tribal societies, the concept of the extended family is further broadened to include the legal authority of tribal elders or officials to intervene when children are involved.

The reasoning is based on the assumption that family members also are part of a larger tribal family that has a right to maintain its cultural integrity.

Dorsay said that infant-adoption cases sometimes receive publicity because well-to-do, non-Indian families seem to be providing material things that are unavailable in some poorer Indian communities.

"Everyone says they accept the principles behind the law, but then they add, 'But in this case, there should be an exception,' " he said.

Those exceptions ignore tribal beliefs that a grandmother or aunt "all have equal legal right and responsibility for the child," he said.

"That's a concept that is very difficult to get across in the courts," he added.

It is equally difficult for non-Indian society to come to grips with the idea that a tribe may exercise rights that override parental rights, Dorsay said.

"The parent has the right to give some idea of where he or she wants to place a child, but the law says that desire shall not outweigh the right of a child to grow up as an Indian," he said.

Dorsay said that greater authority given to tribal governments also brings a greater responsibility.

Along with the authority to make decisions for minor children, tribes have responsibilities to conduct background investigations, handle paper work, appear in court and establish social-service agencies, he said.

Unfortunately, "resources are really a difficult subject" in carrying out provisions of the Indian Child Welfare Act and tribal governments "often do not have the funding to carry out those responsibilities," Dorsay said.

With or without proper funding, he said, "the law is real clear now."

"The tribes clearly have the jurisdiction to oversee the adoption or placement process of their children," he said.

Dorsay added that the standards of Anglo society should not be imposed on Indian society.

Yvette Joseph is a professional staff member in Washington, D.C., for Sen. Daniel Evans, R-Wash., vice chairman of the Senate Select Committee on Indian Affairs. Joseph said the panel is drafting amendments for reauthorization of the law and will hold hearings on the changes May 11.

Among those amendments are provisions to protect family rights, monitor the implementation of the law and provide additional funding for tribal governments, she said.

Joseph agreed that when the law was passed in 1978, not enough money was allotted to make it work as well as envisioned. More importantly, she said, even the people who use the law do not fully understand it.

"Through the years, the act has really not had a chance to evolve to full utility because of that lack of understanding," she said, citing a high turnover rate among social-service workers and a constant need to retrain tribal officials.

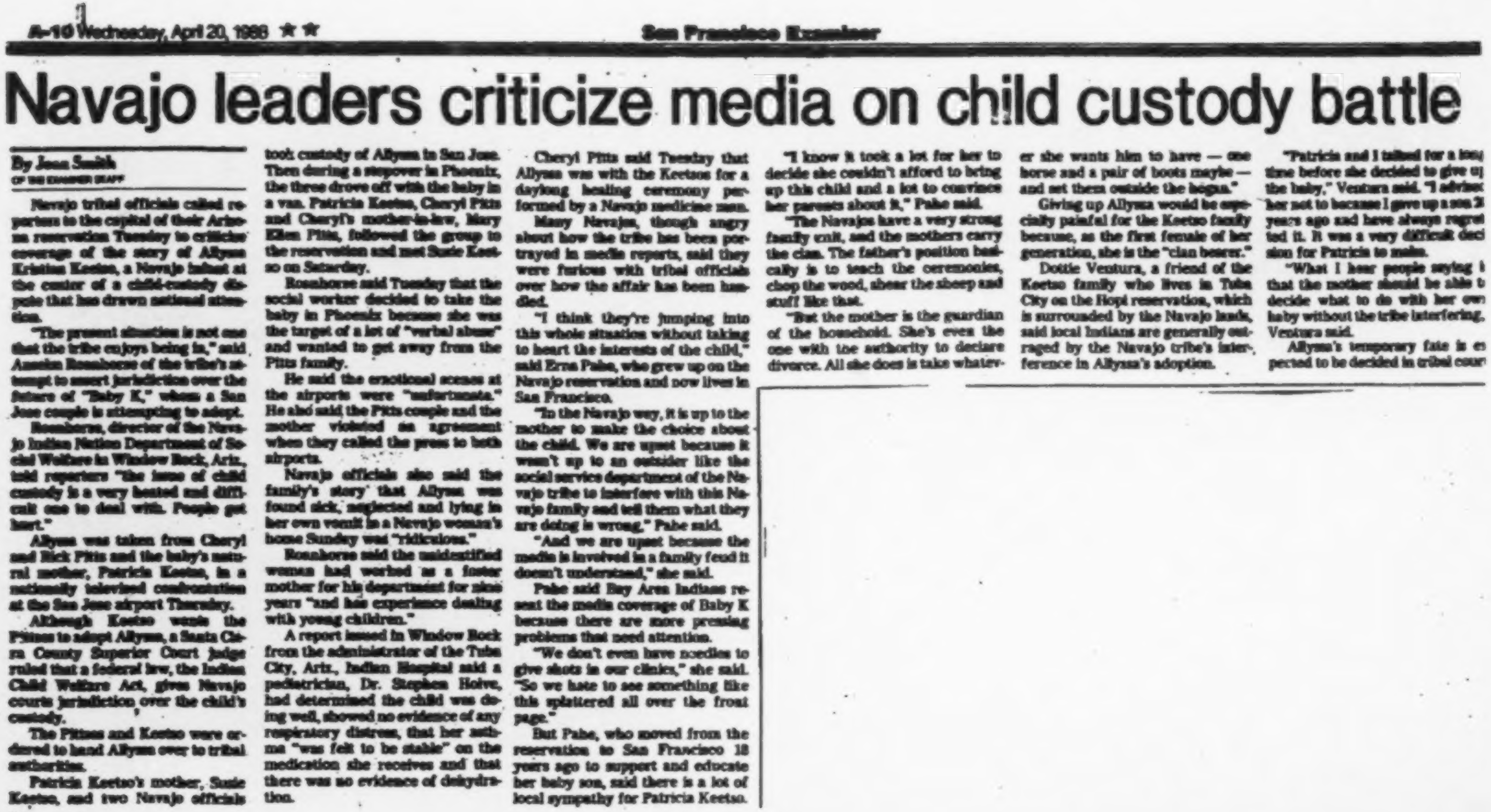
"I've heard it described as a schizophrenic law — legalistic issues on the one hand and the humanistic issues on the other," she said. "It's one of those laws that deals with social and legal issues simultaneously.

"How those two are integrated creates the difficulty in applying the law."

Phyllis Bigpond, executive director of the Phoenix Indian Center, agreed that the law is not fully understood and said there are "differing views about how it should work."

"It's not an easy thing to work with, but I agree with the intent," Bigpond said. "It seems to me that the benefit is worth the difficulties."

She said that each year, her agency works with about 100 families "in which there is a child at risk which could lead to some kind of placement."



A-10 Wednesday, April 20, 1988 ★★ San Francisco Examiner

Navajo leaders criticize media on child custody battle

By Jean Smith
OF THE EXAMINER STAFF

Navajo tribal officials called reporters to the capital of their Arizona reservation Tuesday to criticize coverage of the story of Allyssa Kristian Keetso, a Navajo infant at the center of a child-custody dispute that has drawn national attention.

"The present situation is not one that the tribe enjoys being in," said Amelia Roanhorse of the tribe's attempt to assert jurisdiction over the future of "Baby K," whom a San Jose couple is attempting to adopt.

Roanhorse, director of the Navajo Indian Nation Department of Social Welfare in Window Rock, Ariz., told reporters "the issue of child custody is a very heated and difficult one to deal with. People get hurt."

Allyssa was taken from Cheryl and Rick Pitts and the baby's natural mother, Patricia Keetso, in a nationally televised confrontation at the San Jose airport Thursday.

Although Keetso wants the Pittses to adopt Allyssa, a Santa Clara County Superior Court judge ruled that a federal law, the Indian Child Welfare Act, gives Navajo courts jurisdiction over the child's custody.

The Pittses and Keetso were ordered to hand Allyssa over to tribal authorities.

Patricia Keetso's mother, Susie Keetso, and two Navajo officials took custody of Allyssa in San Jose. Then during a stopover in Phoenix, the three drove off with the baby in a van. Patricia Keetso, Cheryl Pitts and Cheryl's mother-in-law, Mary Ellen Pitts, followed the group to the reservation and met Susie Keetso on Saturday.

Roanhorse said Tuesday that the social worker decided to take the baby in Phoenix because she was the target of a lot of "verbal abuse" and wanted to get away from the Pitts family.

He said the emotional scenes at the airports were "unfortunate." He also said the Pitts couple and the mother violated an agreement when they called the press to both airports.

Navajo officials also said the family's story that Allyssa was found sick, neglected and lying in her own vomit in a Navajo woman's home Sunday was "ridiculous."

Roanhorse said the unidentified woman had worked as a foster mother for his department for nine years "and has experience dealing with young children."

A report issued in Window Rock from the administrator of the Tuba City, Ariz., Indian Hospital said a pediatrician, Dr. Stephen Hoive, had determined the child was doing well, showed no evidence of any respiratory distress, that her asthma "was felt to be stable" on the medication she receives and that there was no evidence of dehydration.

Cheryl Pitts said Tuesday that Allyssa was with the Keetsos for a daylong healing ceremony performed by a Navajo medicine man.

Many Navajos, though angry about how the tribe has been portrayed in media reports, said they were furious with tribal officials over how the affair has been handled.

"I think they're jumping into this whole situation without taking to heart the interests of the child," said Erna Pabe, who grew up on the Navajo reservation and now lives in San Francisco.

"In the Navajo way, it is up to the mother to make the choice about the child. We are upset because it wasn't up to an outsider like the social service department of the Navajo tribe to interfere with this Navajo family and tell them what they are doing is wrong," Pabe said.

"And we are upset because the media is involved in a family feud it doesn't understand," she said.

Pabe said Bay Area Indians resent the media coverage of Baby K because there are more pressing problems that need attention.

"We don't even have needles to give shots in our clinics," she said. "So we hate to see something like this splattered all over the front page."

But Pabe, who moved from the reservation to San Francisco 18 years ago to support and educate her baby son, said there is a lot of local sympathy for Patricia Keetso.

"I know it took a lot for her to decide she couldn't afford to bring up this child and a lot to convince her parents about it," Pabe said.

"The Navajos have a very strong family unit, and the mothers carry the clan. The father's position basically is to teach the ceremonies, chop the wood, shear the sheep and stuff like that.

"But the mother is the guardian of the household. She's even the one with the authority to declare divorce. All she does is take whatever she wants him to have — one horse and a pair of boots maybe — and set them outside the hogan."

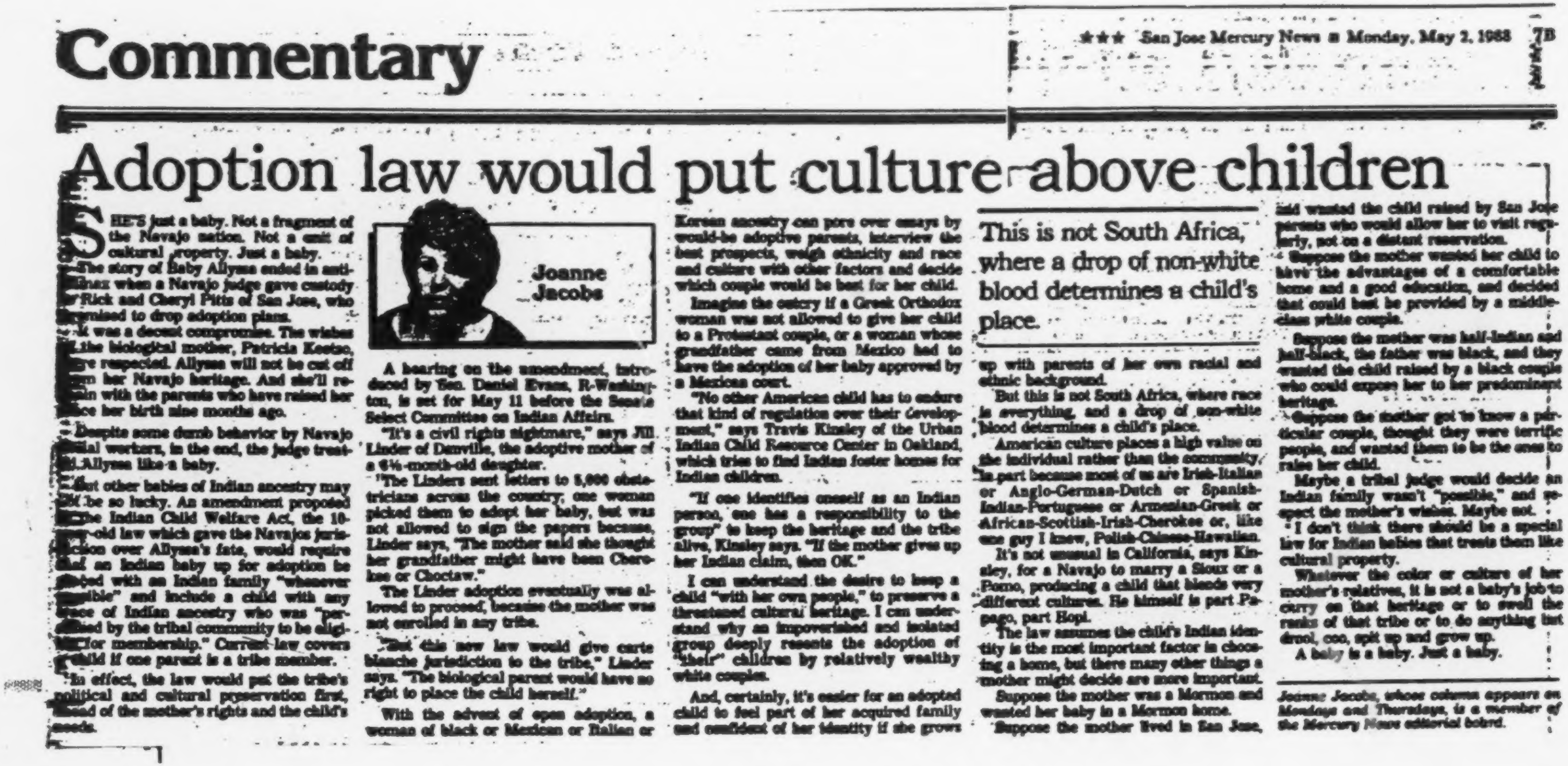
Giving up Allyssa would be especially painful for the Keetso family because, as the first female of her generation, she is the "clan bearer."

Dottie Ventura, a friend of the Keetso family who lives in Tuba City on the Hopi reservation, which is surrounded by the Navajo lands, said local Indians are generally outraged by the Navajo tribe's interference in Allyssa's adoption.

"Patricia and I talked for a lon
time before she decided to give u
the baby," Ventura said. "I advise
her not to because I gave up a son 2
years ago and have always regre
ted it. It was a very difficult dec
sion for Patricia to make.

"What I hear people saying
that the mother should be able
decide what to do with her ow
baby without the tribe interfering,
Ventura said.

Allyssa's temporary fate is e
pected to be decided in tribal cour



Commentary

★★★ San Jose Mercury News ■ Monday, May 2, 1988 7B

Adoption law would put culture above children

Joanne Jacobs

SHE'S just a baby. Not a fragment of the Navajo nation. Not a unit of cultural property. Just a baby.

The story of Baby Allyssa ended in anticlimax when a Navajo judge gave custody to Rick and Cheryl Pitts of San Jose, who promised to drop adoption plans.

It was a decent compromise. The wishes of the biological mother, Patricia Keetso, were respected. Allyssa will not be cut off from her Navajo heritage. And she'll remain with the parents who have raised her since her birth nine months ago.

Despite some dumb behavior by Navajo social workers, in the end, the judge treated Allyssa like a baby.

But other babies of Indian ancestry may not be so lucky. An amendment proposed to the Indian Child Welfare Act, the 10-year-old law which gave the Navajos jurisdiction over Allyssa's fate, would require that an Indian baby up for adoption be placed with an Indian family "whenever possible" and include a child with any trace of Indian ancestry who was "permitted by the tribal community to be eligible for membership." Current law covers a child if one parent is a tribe member.

In effect, the law would put the tribe's political and cultural preservation first, ahead of the mother's rights and the child's needs.

A hearing on the amendment, introduced by Sen. Daniel Evans, R-Washington, is set for May 11 before the Senate Select Committee on Indian Affairs.

"It's a civil rights nightmare," says Jill Linder of Danville, the adoptive mother of a 6½-month-old daughter.

The Linders sent letters to 5,000 obstetricians across the country; one woman picked them to adopt her baby, but was not allowed to sign the papers because, Linder says, "The mother said she thought her grandfather might have been Cherokee or Choctaw."

The Linder adoption eventually was allowed to proceed, because the mother was not enrolled in any tribe.

"But this new law would give carte blanche jurisdiction to the tribe," Linder says. "The biological parent would have no right to place the child herself."

With the advent of open adoption, a woman of black or Mexican or Italian or Korean ancestry can pore over essays by would-be adoptive parents, interview the best prospects, weigh ethnicity and race and culture with other factors and decide which couple would be best for her child.

Imagine the outcry if a Greek Orthodox woman was not allowed to give her child to a Protestant couple, or a woman whose grandfather came from Mexico had to have the adoption of her baby approved by a Mexican court.

"No other American child has to endure that kind of regulation over their development," says Travis Kinsley of the Urban Indian Child Resource Center in Oakland, which tries to find Indian foster homes for Indian children.

"If one identifies oneself as an Indian person, one has a responsibility to the group" to keep the heritage and the tribe alive, Kinsley says. "If the mother gives up her Indian claim, then OK."

I can understand the desire to keep a child "with her own people," to preserve a threatened cultural heritage. I can understand why an impoverished and isolated group deeply resents the adoption of "their" children by relatively wealthy white couples.

And, certainly, it's easier for an adopted child to feel part of her acquired family and confident of her identity if she grows up with parents of her own racial and ethnic background.

This is not South Africa, where a drop of non-white blood determines a child's place.

But this is not South Africa, where race is everything, and a drop of non-white blood determines a child's place.

American culture places a high value on the individual rather than the community, in part because most of us are Irish-Italian or Anglo-German-Dutch or Spanish-Indian-Portuguese or Armenian-Greek or African-Scottish-Irish-Cherokee or, like one guy I knew, Polish-Chinese-Hawaiian.

It's not unusual in California, says Kinsley, for a Navajo to marry a Sioux or a Pomo, producing a child that blends very different cultures. He himself is part Papago, part Hopi.

The law assumes the child's Indian identity is the most important factor in choosing a home, but there many other things a mother might decide are more important.

Suppose the mother was a Mormon and wanted her baby in a Mormon home.

Suppose the mother lived in San Jose, and wanted the child raised by San Jose parents who would allow her to visit regularly, not on a distant reservation.

Suppose the mother wanted her child to have the advantages of a comfortable home and a good education, and decided that could best be provided by a middle-class white couple.

Suppose the mother was half-Indian and half-black, the father was black, and they wanted the child raised by a black couple who could expose her to her predominant heritage.

Suppose the mother got to know a particular couple, thought they were terrific people, and wanted them to be the ones to raise her child.

Maybe a tribal judge would decide an Indian family wasn't "possible," and respect the mother's wishes. Maybe not.

I don't think there should be a special law for Indian babies that treats them like cultural property.

Whatever the color or culture of her mother's relatives, it is not a baby's job to carry on that heritage or to swell the ranks of that tribe or to do anything but drool, coo, spit up and grow up.

A baby is a baby. Just a baby.

Joanne Jacobs, whose column appears on Mondays and Thursdays, is a member of the Mercury News editorial board.

Anglo Adoptions of Native Americans: Repercussions in Adolescence

Irving N. Berlin, M.D.

Abstract. Native American children who are placed in foster homes outside of their tradition suffer an estrangement during their adolescence when the foster care comes to an end. Attention must therefore be paid to long-term as well as immediate developmental needs. In the case of the native American child, and perhaps for all minority children, cultural ties should be preserved.

When Goldstein et al. (1973) wrote *Beyond the Best Interests of the Child*, it became a milestone in the application of developmental knowledge on behalf of children in courts being placed in foster homes, given up for adoption, or being placed in the custody of one or another divorced parent: the overriding issue was that time did not stand still for the child and that the courts had to look at the developmental needs of a child to make attachments to parental figures in their determinations of child placement. The term "psychological parent" came to have special meaning in some courts. The disruption of these longstanding relationships could and did have serious repercussions for the child's subsequent development.

However, the use of these developmental principles involving early childhood needs did not take into account the long-term impact of placement and ignored the special cultural values of some children. The Bottle Hollow conference, the first conference on the mental health of native American children called by the Academy, focused precisely on this issue.

The current concerns appear to affect over 10,000 native American children, as estimated at the conference. The data presented, as well as the many clinical vignettes from the many tribes represented, were devastating in their portrayal of what happens to the Indian child placed outside of his culture. It was also clear historically that some poverty-stricken Indian parents had given up their children for placement to white churches to ensure a child's physical sustenance and to provide some

---

Dr. Berlin is Professor of Psychiatry and Pediatrics, Head of the Section of Child Psychiatry, Department of Psychiatry, University of California, Davis, School of Medicine, Sacramento Medical Center, Division of Mental Health (2315 Stockton Blvd., Sacramento, CA 95817) where reprints may be requested.

002-7138/78/1702-387$00.14 © 1978 American Academy of Child Psychiatry

relief from the burden of feeding another child on a nonexistent income. Many of the children who needed foster placement and were placed with white families until they were 18 often developed good relationships in the foster setting. Then, at age 18 when foster care was terminated, the adolescent found that, to the world, he was still an Indian discriminated against in employment and higher education. Unfortunately, attempts then to return to his tribe were devastating. Many of these adolescents lost an understanding of their native language and had no memory or comprehension of tribal history, culture, customs, and strivings. They became strangers among their own people. The adolescent could not make it either among his people as an anglicized Indian, nor could he make it as an Indian in the white world where he had no family supports and nothing to hang onto or no one to return to. Further, adolescent crime, drug abuse, suicide, and alcoholism, important problems on the reservations, were found to be even more pervasive for the Indian child brought up in white foster homes (Topper, 1974, 1977).

Thus, a new critical issue emerges. What may be advantageous developmentally for the small child may rob him of his cultural heritage and be devastating to him in his later development.

To correct this situation, many tribes are now attempting to secure from state authorities and social services the power to make foster placements within the tribe, or at least among native Americans. This is the beginning of a movement to redress the many years of foster placement of thousands of native American children in white foster homes. Current efforts in some tribes to obtain state financial aid to help these parents avoid such ultimately destructive placements form an important part of this movement.

Our native American mental health colleagues asked us how to reeducate judges and courts to become aware of the long-term effects on the Indian adolescent of placement outside of their culture. Judges must learn to recognize that loss of ties with their tribal customs and culture leaves these children without an identity and can result in an adult life of estrangement from both worlds.

We must now, as developmentalists, approach our short-term goals with greater clarity about long-term effects, at least in the case of the native American child, and probably for other minority children as well.

REFERENCES

GOLDSTEIN, J., FREUD, A., & SOLNIT, A. J. (1973), *Beyond the Best Interests of the Child*. New York: Free Press.

TOPPER, M. D. (1974), Drinking patterns, culture change, sociability, and Navajo adolescents. *Addictive Diseases: An International Journal*, 1:97–116.

——— (1977), Mormon placement: survival strategy or a finger in the dike? Read at American Academy of Child Psychiatry Conference on American Indian Child. Bottle Hollow, Utah.

Prepared for:

Administration for Children, Youth and Families
U.S. Department of Health and Human Services

Bureau of Indian Affairs
U.S. Department of the Interior

Contract No. 105-82-1602
Soledad Sambrano, Ph.D., Federal Project Officer

EXECUTIVE SUMMARY

INDIAN CHILD WELFARE: A STATUS REPORT

Final Report of the Survey of
Indian Child Welfare and
Implementation of the Indian Child
Welfare Act and
Section 428 of the Adoption Assistance
and Child Welfare Act of 1980

Prepared by:

CSR, Incorporated
Washington, DC

Three Feathers Associates
Norman, Oklahoma

Project Manager:

Ruth Hubbell, Ph.D.
CSR, Incorporated

Subcontractor Director:

Antonia Dobrec, MSW
Three Feathers Associates

Report Authors:

Margaret C. Plantz, Ph.D.
Ruth Hubbell, Ph.D.
Barbara J. Barrett
Antonia Dobrec, MSW

April 18, 1988

This document and the report it summarizes were prepared pursuant to U.S. Department of Health and Human Services Contract No. 105-82-1602. The statements and conclusions herein are those of CSR, Incorporated and Three Feathers Associates, and do not necessarily reflect the views or policies of the sponsoring agencies.

Indian Child Welfare: A Status Report

EXECUTIVE SUMMARY

Indian Child Welfare: A Status Report, is the report on the first systematic national examination of the effects of the Indian Child Welfare Act (Public Law 95-608) enacted by Congress in 1978. Commissioned by the Administration for Children, Youth and Families and the Bureau of Indian Affairs, the study examined the prevalence of Native American children in substitute care and the implementation of the Indian Child Welfare Act and portions of the Adoption Assistance and Child Welfare Act of 1980 as they affect Indian children and families. The study was conducted by CSR, Incorporated and its subcontractor, Three Feathers Associates.

BACKGROUND

Passage of the Indian Child Welfare Act was prompted by deep concern among Indians and child welfare professionals about the historical experience of American Indians and Alaska Natives with the country's child welfare system. Causes for this concern included:

- the disproportionately large number of Indian children who were being removed from their families;
- the frequency with which these children were placed in non-Indian substitute care and adoptive settings;
- a failure by public agencies to consider legitimate cultural differences when dealing with Indian families; and
- a severe lack of service to the Indian population.

To address this situation, Congress enacted the Indian Child Welfare Act of 1978. The Act:

- removes sole authority for the protection of Indian children and the delivery of child welfare services from the States;
- re-establishes tribal authority to accept or reject jurisdiction over Indian children living off of the reservation;
- requires State courts and public child welfare agencies to follow specific procedural, evidentiary, dispositional and other requirements when considering substitute care placement or termination of parental rights for Indian children;

- provides for intergovernmental agreements for child care services; and
- authorizes grants for comprehensive child and family service programs operated by tribes and off-reservation Indian organizations.

In 1980, Congress passed the Adoption Assistance and Child Welfare Act (Public Law 96-272). Provisions of this law regarding child welfare casework practices apply to all children served by public child welfare agencies. The law also provides, in Section 428, that Title IV-B grants for child welfare services may be made directly to Indian tribes.

In combination, the Indian Child Welfare Act and the Adoption Assistance and Child Welfare Act provide a number of safeguards and procedures to ensure that Indian children are not separated from their families and the jurisdiction of their tribes unnecessarily, and that they receive child welfare services focused on achieving permanency.

QUESTIONS ADDRESSED BY THIS STUDY

To assess the extent to which the Indian Child Welfare Act and the Adoption Assistance and Child Welfare Act are being implemented with respect to Indian children and families, this study addressed the following questions.

1. What is the prevalence and flow of Indian children in substitute care? What are the characteristics of these children and their placements? How does the current situation compare to previous points in time? To the general substitute care population?
2. To what extent are the minimum Federal standards for removal and placement of Indian children, as specified in the Indian Child Welfare Act, being followed? What factors are promoting and undermining full implementation of these standards?
3. What services are provided to Indian families whose children are in substitute care? How uniformly are the casework protections and practices prescribed in the Adoption Assistance and Child Welfare Act applied to Indian cases?
4. How long do Indian children stay in substitute care? What are the outcomes of their cases?
5. What resources, including funds, training, and technical assistance, are available to tribes to operate child welfare programs? What types of programs are operated by tribes and Indian-run organizations that receive Federal and other assistance? What factors are supporting and inhibiting the delivery of services by these programs? What are the programs' current and projected needs?

METHODOLOGY

The study of Indian child welfare had two parts:

- a nationwide survey of State, tribal, Bureau of Indian Affairs and off-reservation Indian-operated child welfare programs regarding the number and flow of Indian children in substitute care; and
- a field study of public, tribal, BIA and off-reservation program child welfare practices affecting Indian children in Arizona, Minnesota, Oklahoma and South Dakota.

FINDINGS

Study findings related to the five general research questions are summarized here.

1. **What is the prevalence and flow of Indian children in substitute care? What are the characteristics of these children and their placements? How does the current situation compare to previous points in time? To the general substitute care population?**

The nationwide mail survey of programs providing substitute care services for Indian children and families provides information including the following.

- There were 9,005 Native American children in substitute care on June 30, 1986, under the supervision of public agencies, tribes, BIA agencies, and off-reservation Indian programs. Of these, 52 percent were served by public programs, 35 percent by tribes, 9 percent by the BIA, and 5 percent by off-reservation programs. (Numbers are rounded.)
- Indian children make up 0.9 percent of the total child population but represent 3.1 percent of the total substitute care population. They are placed in substitute care at a rate that is 3.6 times greater than the rate for non-Indian children.
- Over 9,300 Indian children entered care during 1986, while only 6,258 left care.
- The number of Indian children in care has risen from about 7,200 in the early 1980s to 9,005 in 1986. In contrast, there has been a decrease in the number of children of all races in substitute care during that time period.
- Native American children in care are younger than the overall substitute care population. The median age is 9.9 years for Native American children, compared to 12.6 years for all children.

- Seventy-seven percent of Indian foster children live in family settings (related or unrelated foster homes and unfinalized adoptive homes), while ten percent reside in institutions. These percentages are similar to those for foster children of all races.

- Of the Indian children in foster homes, 63 percent are in homes in which at least one parent is Indian. Indian foster children are most likely to be in Indian homes if they are in tribal, BIA or off-reservation care and least likely if in public care.

- Sixty-five percent of the Indian children in substitute care have a case goal that would place them in a family setting (return home, relative placement, guardianship, or adoption). Indian children are slightly more likely than all foster children to have a goal of return home or relative placement (56 vs. 51 percent) and less likely to have a goal of adoption (9 vs. 14 percent).

2. To what extent are the minimum Federal standards for removal and placement of Indian children, as specified in the Indian Child Welfare Act, being followed? What factors are promoting and undermining full implementation of these standards?

The Indian Child Welfare Act (ICWA) establishes requirements for State courts and public child welfare agencies that are considering placing an Indian child in substitute care or terminating parental rights to an Indian child. Interview and case record data from the 4-state field study provide indications of the extent to which these requirements are being implemented.

- According to the ICWA, parents and tribes are to be notified when an Indian child is at risk of being removed from the home. In the public program case records reviewed, between 65 and 70 percent had some evidence that parents had been notified of the proceedings. About 80 percent of these records contained evidence of the tribe's notification.

- Tribes have the right to assume jurisdiction over Indian children involved in State court child custody proceedings if they wish. Case record data suggest that requests for transfer of cases from State to tribal jurisdiction are honored in the majority of cases. Some requests apparently are denied because of socioeconomic conditions on reservations and perceptions of the adequacy of tribal social services or judicial systems, which is contrary to the BIA's Guidelines for States Courts for implementing the ICWA.

- The ICWA specifies that a child cannot be removed from the home unless it is demonstrated that active efforts have been made to provide services designed to prevent removal. However, preventive efforts were documented in only 41 percent of the case records of Indian children in public care. These efforts usually involved counseling by the caseworker.

- The ICWA requires testimony from expert witnesses in substitute care placement and termination of parental rights (TPR) cases. This requirement had been met in the limited number of recent TPR cases heard by the State court judges who were interviewed. In substitute care cases, however, the proportion of each judge's recent cases in which expert witnesses had appeared ranged from none to all.

- The ICWA gives priority for substitute care placements to relatives or tribally approved foster homes. In the field study, 47 percent of children in public care were placed in relative or Indian non-relative placements.

- The ICWA also prescribes preferences for adoptive placements that give priority to placement with relatives, other members of the tribe, or Indian families from other tribes. In the field study, adherence appears to be fairly high, although the number of cases is very small.

- Factors that promote implementation of the Indian Child Welfare Act, in the opinion of public and tribal officials, include:

  - Passage of a State Indian child welfare law that makes the Federal law more explicit and reinforces compliance by State courts and public agencies.

  - Hiring of Indian staff members in State and local public agencies to help inform policy decisions and strengthen casework practices related to Indian families.

  - State-Tribal agreements that provide support for substitute care placements and for child welfare services.

  - Judges' education on and awareness of the Act.

  - Cooperative relationships between public agencies and Indian tribes and organizations.

  - Training and technical assistance to help develop tribal child welfare services.

- Factors that respondents believe deter or undermine implementation of the Act include:

  - Unfamiliarity with or resistance to the Act.

  - Lack of experience in working with tribes.

  - Turnover of public agency staff.

  - Concern about tribal accountability for providing services and caring for children.

- Lack of sufficient funding for tribal child welfare services and proceedings.

- Absence of tribal courts with the authority to assume jurisdiction over proceedings involving tribe members.

3. What services are provided to Indian families whose children are in substitute care? How uniformly are the casework protections and practices prescribed in the Adoption Assistance and Child Welfare Act applied to Indian cases?

Field study interviews and case record reviews investigated the staffing and services of public, tribal, BIA and off-reservation child welfare programs, and the adherence of the first three types of programs to sound casework practices such as those specified in the Adoption Assistance and Child Welfare Act.

- o Public programs provide the standard range of child welfare services that are available to all families. Because of funding limitations, the range of core services provided directly by tribal, BIA and off-reservation programs is more limited. Other services are provided through frequent referrals.

- o The proportion of staff with a Bachelor's or Master's degree in social work is higher in tribal programs than in public programs visited for the study. On the other hand, tribal staff have fewer average years of experience in child welfare compared to staff in the other types of programs. Eight of the twelve public programs have at least one Native American staff member.

- o Recruitment of Indian homes poses difficulties for agencies across all types of programs. Except for agencies located on reservations, public programs have very few Indian foster families. State and local agency recruitment efforts range from nothing to multi-strategy campaigns. There has been limited exploration of outreach methods that build on Indian norms and traditions.

- o Over 80 percent of the children whose case records were reviewed for the field study were in foster homes. The others were in group settings.

- o A case goal that will place the child in a permanent family setting (return home, relative placement, or adoption) was assigned to 75 percent of reviewed cases in public programs, compared to 70 percent of tribal cases and 31 percent of BIA cases.

- o Written case plans appeared in the majority of public and tribal case records (74 and 65 percent, respectively), but in less than one-quarter (23 percent) of BIA case records. Few records contained plans that were signed by the parent (21, 12, and 0 percent, respectively).

- Among those case records with information on the last administrative or judicial review, 80 percent of the public and tribal cases and 55 percent of the BIA cases had been reviewed in the last six months, usually by the court.

4. How long do Indian children stay in substitute care? What are the outcomes of their cases?

Both the mail survey and case record data from the field study provide information on these measures of program effectiveness. Survey findings are the following.

- The median length of time in care is 12 to 23 months for public, tribal, and off-reservation programs and 36 to 59 months for BIA programs. The proportions of children in care for three years or more are 24 percent for public programs, 18 percent for tribal programs, 57 percent for BIA programs, and 34 percent for off-reservation programs.
- Outcomes for children discharged from care show family-based permanency (return home, relative placement, adoption, or guardianship) for 79 percent of the children. Children are more likely to be discharged to families if they are in off-reservation Indian center care (86 percent) or tribal care (83 percent) than in public (78 percent) or BIA care (72 percent).

5. What resources, including funds, training, and technical assistance, are available to tribes to operate child welfare programs? What types of programs are operated by tribes and Indian-run organizations that receive Federal and other assistance? What factors are supporting and inhibiting the delivery of services by these programs? What are the programs' current and projected needs?

Reviews of annual funding data of existing grant programs and interviews with public, tribal, BIA and off-reservation Indian center officials provide information concerning resources for Indian-operated child welfare services.

- Tribal child welfare programs rely most heavily on Federal monies available through "638" contracts and ICWA Title II grants. Title IV-E funds help support foster care payments for some tribes through agreements with States. In the field study sites, State funds or support in the form of access to services and provision of training and technical assistance have been made available to some tribes.
- Applicants compete against each other annually for the limited Title II funds available. There have been an average of 150 awards each year. About three-quarters have been to tribes; the remainder have been to off-reservation Indian centers. The average grant is around $55,000. Programs often have been funded one year but not the next,

both because funds are lacking and because their score in the competitive award process is too low.

- Title IV-B grants, authorized in Section 428 of the Adoption Assistance and Child Welfare Act, have provided an average of about $7,000 per tribe to about 35 tribes per year.

- Off-reservation child and family service programs in the field study sites have been developed with the support of Title II grants. They are multi-purpose programs that provide a range of preventive, remedial, and advocacy services to Indian families, including families involved in public and tribal child welfare programs. As a function of their location in urban areas, they tend to have access to an established social services network in the community for referrals.

- Training and technical assistance resources include other Indian professionals in the community and in private organizations that specialize in child welfare matters (e.g., American Indian Law Center, Three Feathers Associates), State child welfare agencies, the BIA, and local university staff.

- Child protection, substitute care, pre-adoption and aftercare services are offered by all tribal programs, but the range of services is limited. Referrals to other social services are the norm. Availability of these services from tribal programs depends upon other resources the tribe has been able to marshall (e.g., grants for substance abuse treatment, physical health facilities, support services). The high caseloads carried by many tribal child welfare workers hamper efforts to deliver needed services to clients.

- Among the current and projected needs of tribal programs are family-based services, mental health and substance abuse counseling and treatment services, day care, youth/adolescent homes and services, and emergency shelters. More staff, training and technical assistance in preventive and protective services, and procedural manuals would be beneficial.

- In identifying their needs, off-reservation program respondents named services such as day care, early warning and crisis intervention programs, and family therapy by Indian professionals. They also spoke of legal service and child advocacy needs in child welfare matters.

CONCLUSIONS

There has been progress in implementing the Indian Child Welfare Act enacted in November 1978. In many localities, public agencies and State courts are making significant efforts to comply with the procedural, evidentiary, dispositional and other requirements of the ICWA. Some States have supported the intent of the law through the passage of State Indian child welfare legislation and the negotiation of State-Tribal agreements and service contracts.

However, Federal-level efforts to communicate performance standards and monitor or enforce compliance have been limited. As a result, implementation of the Act has been uneven across geographic areas and governmental levels, and with regard to specific provisions. In some localities, non-compliance is quite pronounced.

The Act has not reduced the flow of Indian children into substitute care. In fact, the number in care has increased by roughly 25 percent since the early 1980s. The greatest increase is occurring in tribally operated child welfare programs, with public programs actually showing a decrease of about 15 percent from 1980 to 1986.

The public agencies studied are providing Indian children with the permanency planning and case review safeguards required by Public Law 96-272. Some are making efforts to hire Native American staff. However, public agencies are failing to provide Indian placements for a significant number of Indian foster children.

Based on data from their case records, the tribal programs visited for this study are doing a very creditable job of following standards of good casework practice and achieving family-based permanency for out-of-home children. This is particularly noteworthy in light of the inadequate and unstable funding arrangements under which they work. The substantial increase in tribal substitute care caseloads nationally indicates a need for expanded preventive services to children whose needs currently cannot be met in their own homes because of a lack of such services.

Off-reservation Indian-operated programs are important service resources for urban Indian families. They perform well in the provision of permanency-based foster care services and the placement of Indian children in Indian foster homes. They also serve as valuable links between public agencies and tribes.

Mail survey and case record data suggest that permanency planning in BIA agencies is not being practiced as well as in other programs. Children in BIA care are less likely to have case plans and case reviews than in other programs. They remain in care longer and are less likely to be discharged to family settings. Given the severe understaffing that characterizes most BIA social service programs, the declining child welfare caseloads in these agencies is a beneficial trend for both clients and staff, and the effort to shift child welfare responsibilities from BIA agencies to tribal programs should continue.

With the exception of 638 contracts from the BIA, which generally continue from year to year, funding for tribal child welfare programs comes from a hodge-podge of sources that requires tribes to scramble and compete annually for small and unreliable grants. This funding pattern makes continuity in services nearly impossible and the delivery of the quality services observed in this study obtainable only through the professionalism and dedication of program staff. It also limits the provision of the comprehensive services needed to prevent placement and re-entry.

In conclusion, progress has been made. Indian children are being protected and served better than in the past, but Federal, State and local efforts still are needed to continue to improve the provision of child welfare services to Indian children and families.

ETHNIC IDENTITY PROBLEMS AMONG TEN INDIAN PSYCHIATRIC PATIENTS

JOSEPH WESTERMEYER, M.D., PH.D.
Professor
Department of Psychiatry, University of Minnesota
Minneapolis, MN 55455

SUMMARY

Identity problems in general are probably no more common among American Indian people than in the general population. However, some Indian people do have an uncommon type of identity problem : negative or ambivalent feelings regarding their own racial and ethnic identity.

This study is based on ten intensive case studies of Indian psychiatric patients seen at University of Minnesota Hospitals. These data are supplemented by information from Indian people who were not patients, and from other Indian patients besides these ten.

These ten Indian patients are not markedly different with regard to demographic or clinical characteristics from other Indian patients without such problems. Five of the patients, aged 15 to 23, were going through a crisis with regard to their identity; emotional and behaviour disturbances were prominent. The remaining five, aged 27 to 45, had negative identities which were ego-syntonic; they were 'loners' with chronic social disability.

Ethnic identity problems commonly ensue in Indian and other ethnic groups following migration into social settings where they assume a 'minority' social identity. Therapeutic strategies should be based on enhancing ethnic identity. Ultimate prevention will depend upon the Indian community members' ability to determine their own destiny.

INTRODUCTION

IDENTITY problems are not peculiar to urban American Indians. They are commonly encountered in clinical practice among people of diverse ethnic and racial groups, both sexes, all ages and socioeconomic groups. Generally such difficulties involve negative feelings regarding one's sex, bodily or facial attributes, behaviour, or personality characteristics. However, the identity problems referred to herein are uncommon among White patients. They involve negative feelings which some American Indian psychiatric patients have regarding their racial and ethnic identity.

Identity is defined, for purposes of this paper, as a sense of one's self. In developmental terms, identity evolves as a result of relationships with people whom the individual regards highly and wishes to emulate. While identity development is usually conceived as a process which continues over a lifetime, most students of this phenomenon concur that identity issues give way to the adult's lessened dependency and greater self reliance.

Various identity problems can be distinguished conceptually, though in practice they often overlap. *Identity crisis* occurs during a momentous life change, as during adolescence, and entails considerable emotional discomfiture regarding who one is or ought to be. Emotional or behavioural distress often accompanies the crisis. As a result of chaotic child raising or repeated failure experiences, an individual may acquire a *negative identity* involving behaviours or personality characteristics which are eschewed on a moral or intellectual level but seemingly cannot be altered. Such a negative identity may cause anguish for a person who does not like oneself, or such an identity may relieve distress by providing an imagined role as a powerfully evil or dangerous person. *Ethnicity* here refers to one's values, attitudes and preferred behaviours, while *race* refers to one's genetic inheritance.

METHOD

This paper grew out of clinical experience among urban Indian people in the Twin Cities over the last seven years. Ten patients with prominent ethnic identity problems served as the nucleus of this study. Ethnic and racial identity problems were encountered in more than these ten patients, but were not a major part of their clinical problem. It should be emphasized that most Indian patients did not have racial and ethnic identity problems: they successfully integrated a Siouan or Chippewayan or mixed White-Indian identity and felt positively about their ethnicity and race.

In addition to clinical work, data regarding identity were also obtained from several Indian acquaintances and colleagues who were not patients. A few exemplary quotes from these people have been included here to highlight certain issues and to demonstrate that such identity problems also occur among Indian people who are not psychiatric patients.

FINDINGS

Demographic Characteristics. These patients tended to be male and young (see Table 1). The frequency of marriage was low: of six patients over the age of twenty-one, only two men had been married. One of these two were divorced and the other had been separated from his wife for some weeks prior to hospitalization.

Racial and Ethnic Characteristics (see Table 2). The patients' tribal affiliation and percentage Indian blood resembled that of the general Indian population in the Twin City area. They had initially moved from the reservation to an urban setting at various times ranging from less than one year to twenty-eight years prior to admission. Nine of them had made at least one trip to their home reservation during the two years prior to admission.

Clinical and Childhood Characteristics (see Table 3). These patients did not manifest psychotic problems. Instead, a mixture of depression, self destructive behaviour, and behavioural problems prevailed. Five of them had lost a parent before the age of 18; all of this group had lived in one or more foster homes.

Five People with Identity Crisis. Five patients were in conflict about their Indian identity and about what 'being Indian' actually meant. They ranged in age from 12 to 23 years. All were students and were economically dependent on others.

Two of these five adolescents, both young men aged 15 and 23, had been in a series of foster homes since early childhood. One had been in nine foster homes, and the other in fourteen. They had been raised socially and culturally as ethnically White children in families that were ethnically and racially White. During childhood this presented no particular difficulties. In describing this period one of them stated, 'I felt like I belonged to the middle class Protestant majority.' For a time in their earlier childhood, both believed they were racially White. As teenagers and young adults, however, they found that their peers and their peers' parents began to assign an 'Indian' racial and ethnic identity to them, though they had never been enculturated into the lifeways of Indian people. Parents of White girls did not want them dating their daughters, and they began to be excluded from mixed male-female parties. Some peers referred to them as 'buck' or 'Chief Sitting Bul and warned them that they would become 'drunken Indians' if they used alcoh Though raised apart from Indians in childhood, they were pressured into conta with Indian peers in group homes during adolescence. Both presented with se related problems:

> *Case 1* was referred because of a suicide attempt after another youth in an Indian youth program had rejected his homosexual advances. He had begun homosexual activity some years previously with a foster parent and had continued homosexual activities with schoolmates and other foster children. Once in an Indian youth program (after expulsion from his fourteenth White foster family), he had felt alienated from the other members and had used the 'homosexual' role to retaliate against the group and further isolate himself.

> *Case 5* was referred because while drinking he had raped a White girl, the best friend of his own White girl-friend. The patient lived with two male White room-mates and felt more at ease with Whites than with Indians, though he was employed by an Indian youth group and received Indian scholarship funds. He felt a mission 'to help the Indians,' wanted to be 'a Jesus Christ for the Indians,' and hoped to accomplish the latter by becoming a teacher. Much of the time he felt depressed, confused, and frustrated, but was unable to share these feelings with anyone. He believed that his girlfriend was 'using their relationship to rebel against her parents.

The remaining three adolescents, aged 12 to 18, were all female. They ha also been in foster homes, but for much shorter periods of time. Two of them ha White fathers. In two cases, the Indian parents had expressed anti-Indian attitud throughout their childhood.

> *Case 2* was seen in consultation because of repeated runaway, truancy, and intoxication with glue and solvents. Both her biological father and her present step-father were White, and she was the only child out of the ten whose appearance was not conspicuously Indian. She began running away because her full-blood Indian mother objected to her Indian girlfriends and boyfriend, criticized her beadwork and costume making for pow-wows, and repeatedly warned her that Indians were 'dirty' and 'will get you into trouble.' Two month's placement in a White foster home had exacerbated her problematic behaviour.

> *Case 3* was seen in consultation because of a suicide attempt. Following the death of her Indian mother two years before, she had lived with her White father and six siblings for one year. At one point the father sent the children to the Indian maternal grandmother to live because he could not both support them and look after them. The patient began to use drugs and had problems with her White school teachers. Upon being sent by a White welfare worker to a White foster home, she attempted suicide. In the hospital she continued to gesture suicide, rip her clothes, and attempt to run away. At one point she stated 'I'm the only Indian here and I hate everybody like they hate me.' She had a recurrent dream in which she gave birth to a 'baby girl with big blue eyes'; she loved this baby but also felt compulsed to strike and injure her.

Case 4 was referred following multiple suicide attempts during several months in various foster homes, and four admissions to various psychiatric facilities. One year prior to admission her Indian mother had died of cancer, and nine months before admission her Indian father had died in a car accident. Following placement in a White foster home, she began to run away and abuse drugs. Prior to their deaths, her adoptive parents (who lived in a White suburb) had cut off all ties with their relatives and forbade the children to go to the Minneapolis 'Indian' neighbourhood. Unlike her more attractive and sociable elder married sisters, the patient felt ugly and unlovable – and attributed this to her 'Indian' features. In addition, she found life in White foster homes quite unlike her own upbringing and wanted to live with Indian relatives, but had been thwarted from this by her White welfare worker.

Five People with Negative Identity. Unlike the first five cases, the last five men had no ambivalence or questions regarding their identity. All saw themselves as Indian, both racially and culturally. They were older than the first group, ranging from 26 to 45 years; and all were male. None had ever been in foster homes; two spent part of their adolescence in Indian boarding schools and one had been imprisoned for 12 years on a burglary conviction.

This group had two elements in common. First, they were estranged from their Indian family members. Second, they lived as lower class individuals mostly away from other Indian people on the periphery of the majority society. The following vignettes demonstrate their similarities and differences:

Case 6 was admitted for hallucinations and paranoid delusions at the end of a weekend drinking binge. He had multiple psychiatric admissions and had long been a psychiatric out-patient at the student health service where he attended school. In the abstract he supported Indian activism but avoided Indian people because he felt estranged from them and had little respect for them. Instead he belonged to Jewish student and activist groups which he admired. He found a sense of purpose among Jewish people and liked to think that his Indian tribe might be 'the lost tribe of Israel.' He identified himself as a 'Zionist.'

Case 7 was hospitalized for acute and chronic alcoholism. He lived in a 'loner a deux' relationship with his Winnebago wife. Both of them avoided other Indian people whom they felt 'take advantage of us' and 'always lead us astray.' During his childhood his father forbade Chippewa to be spoken in the home.

Case 8 was seen as an outpatient for evaluation of 'depression.' A 'loner' since childhood, he felt ill at ease among Indian people and preferred to visit his girlfriend, a divorced black woman and mother of nine. At times he felt 'militant' and thought he might want to associate with Indian people, while at other times he reported 'not feeling Indian at all.'

Case 9 was admitted to the hospital for alcoholism. He worked at a solitary job and lived alone. He never invited Indian relatives or his Indian drinking companions to his small apartment because he did not trust them. In his cosmology, 'All us Indians are drunks.' Indeed, he rationalized his own alcoholism as due to the fact that 'I'm an Indian.'

Case 10 became depressed during one year of abstinence following treatment for chronic alcoholism. 'When I was drinking I could always just be another drunken bum instead of an Indian.' Bereft of his 'drinking' identity, he again felt about himself the same way he had felt during his adolescence (i.e. that he was 'no good' because he was Indian). Twenty years of heavy drinking had ameliorated, but not resolved his negative identity. He was also a 'loner' who could tolerate only a few hours with his relatives.

DISCUSSION

Ethnic Identity Crisis. All five young Indian people were struggling for a viable identity with which to enter adulthood. The two males were raised to assume a White middle class identity, but found that this identity was socially denied to them by White people because of their markedly Indian racial characteristics (both were full-blooded). Pressured to associate with Indians, each settled on a different strategy. One chose to attempt isolation from Indians by acting out a sexual role which he knew would alienate others. The second preferred the company of Whites, but found he could obtain funds by 'being Indian;' he planned to become a Messiah for 'the Indians' (whom he always referred to in the third person, rather than in the first person).

The three female patients were raised throughout childhood by Indian mothers who themselves rejected their own Indian-ness. Their identity crises were exacerbated by other factors including recent parental loss, White father, a consistent criticism of Indian people by the Indian parents, and recent removal to a White foster home. Anger toward their parents prevailed among these young women: anger over abandonment by their White fathers, anger for the criticism of Indian culture by their Indian parents, and anger at their Indian parents whose absence or impotence led to their placement in White foster homes. This anger, coupled with loss of the parent in two cases, led to frustration, depression, and behaviour problems. Social workers managed these three problems by viewing the Indian extended family complex as 'pathological,' and then placed the young women in White foster homes. In all three cases, the placement precipitated even more severe problems (suicide attempts, runaway, truancy).

Negative Ethnic Identity. The second five cases had personal and interpersonal problems of major proportions for a long time. Among these five men the negative identity as Indian served several useful psychodynamic purposes. These can be stated as follows:

> *Projection:* If my Indian relatives do not like me or want anything to do with me, it is not because I am bad but because they are no good. It is better anyway to live among non-Indians, who are nicer people.
>
> *Irresponsibility:* Essentially I am a bad person. However, my badness is not due to anything for which I am responsible or which I can change. It is solely due to the fact that I am Indian. I did not make myself this way, and nothing or no one can change me from being this way.
>
> *Depression:* I have made a mess of my life, and I do not amount to much. This has come about because I am Indian. Indians are no good and I am no good.
>
> *Denial:* Being an Indian is basically a bad deal. But if I cannot change my skin or my relatives, at least I can control my behaviour. I will agree with myself not to remind myself that I am Indian, and will devote myself to a non-Indian identity.

These psychodynamic interpretations infer that the 'negative identity as Indian' becomes merely a convenient excuse or rationalization for feelings of rejection and low self esteem, paranoid feelings, failure experiences, and inability to integrate one's racial make-up (i.e. one's genes) and one's ethnicity(i.e. one's raising from childhood) into a coping, adult identity. But if this be so, why do Irish and Norwegian patients not demonstrate a similar phenomenon? This important point will be addressed later in the discussion.

The Ethnic Identity Issue. These observations were shared with several Indian acquaintances and colleagues. Most knew of similar cases, but could not identify similar identity problems within themselves either now or during their adolescence. However, several informants said they understood the issue well as a result of their own life experiences. Their own words carry the message well:

> *Case A.* (Chippewa male, administrator, married, age 35.) When I was a boy I thought there were three kinds of people: good and bad people of my own race, and good White people. I saw the White doctors, White teachers, White nurses, White social worker, White storekeeper. They were able people and led good lives.
> I grew up and drank a lot. I didn't take care of my family and came to hate myself for being what I was. I wished I was White and dreamed about being White.
> But my thinking was unbalanced, like a three-legged chair. Finally I found that fourth leg when I discovered there were bad White men, too. Then my thinking became like that four-legged chair: it became more stable and didn't tip over so easy.

Prior to discovering that there were also 'bad' Whites, this man equated goodness with race. In an intellectual exercise of reverse racism, he blamed the faults which he perceived in himself on his 'being Indian.' Robbed of this phantasy by his later life's experiences, he decided eventually he was responsible for his own actions, whether 'good' or 'bad.'

> *Case B.* (Chippewa male, academician, single, age 27.) During my teen-age years I began to avoid direct sunlight so my skin wouldn't become darker. Even on hot days I'd wear a hat and long sleeves. I'd even pull up my shirt collar. Once when I was drunk I raked my arms with a broken glass hoping that the scars would turn them white. I used to day-dream about what it was like to be White until I became active in community development work with my people. Then the day dreams stopped, and I was content to be Indian.

Unlike the former man in A, this man did not employ his Indian-ness as an excuse for undesirable behaviour. Instead, he had negative feelings about his body and his personality, and he did not respect Indian people as a group. As he attained successes, he felt better about himself. And as he came to understand the social history and culture of his people, he felt better about them also.

Experiences with achievement and attainment are necessary for the development of a positive self-image. However, living as they do within a majority social milieu often inimical to their own lifeways, many Indian people commonly encounter failure and frustration. One patient (not included among this series of ten) expressed it in these words as he was explaining how he had come to be a 'chronic psychiatric patient' though he had no symptoms of major mental illness:

> *Case C.* (Chippewa male, unemployed, single, age 37.) What if I can

survive on failure? What if my God is failure? There's all kinds of ways to survive. It's pretty hard to accept failure. But we're not all perfect. We'll always be stupid. We're not even starting to find ourselves. What if my God is failure?

In one way or another, Indian people in their thirties or older seemed to have settled on some concept of what 'being Indian' meant to them personally. For some younger people it was often not so clear. One of the teenaged patients expressed her quandry about what it meant to be Indian in a winsome fashion. As she was feeling better about herself and her future, she remarked quite seriously one day, 'When I grow up, I'm going to be an Indian.'

Urban Indians as Part-time Immigrants. The vast majority of Indian people in the Twin Cities were born on the reservation. They first came to the city within the last decade or two, and – unlike White or Black Americans – they migrate back to the reservation frequently. In the city Indian people encounter a physical environment, social organizations, accepted behaviours, attitudes and values that are markedly different from what they knew on the reservation.[1-3] From both psychological and social perspectives (if not from legal or geographic perspectives), urban Indians are part-time immigrants in the land of their ancestors.

Among the several immigrant groups thus far studied, first generation migrants have experienced high rates of mental health problems.[4-6] Identity problems and associated emotional disturbances may persist for two or three generations following migration.[7] Given the social, economic and communication barriers facing Indian people in cities, [1-3,8] the urban Indian is not only an immigrant, but a lower socioeconomic class person also. Thus, it would be extraordinary if Indian people were to come into large, complex urban areas and not experience both identity problems and increases in mental health problems of all kinds.

Ethnic and Racial Identity Problems. Similar observations to those in this paper have been made in the past among other racial and ethnic groups. They have been observed among Black people in the United States and in Colonial Africa, by both Black and White observers.[9-11] Identity problems have also been observed among American Jewish people, probably due in part to their social status as a minority in Europe.[7]

Suffice it to say that these ethnic identity problems are not bizarre or limited to Indian people. They commonly occur among minority groups, lower socioeconomic groups, and recent immigrants. However there has so far not been a professional focus on Indian identity problems similar to that which Fanon[9] initiated for Black identity problems.

Proposed Remedial Measures. Much can be done to ameliorate or prevent ethnic identity crises among Indian adolescents. Courses on Indian culture, history, language, and family life can be taught in grade school and high school in collaboration with Indian parents (as some schools now do). In times of family turmoil, social helpers should employ Indian homemakers, the extended kin group (in the method described by Atteneave[12]), alcoholism services, and mental health resources in order to keep families intact. Foster placement in White homes exacerbates the identity crisis for Indian children and adolescents taken from their own homes. Part-time employment can aid Indian adolescents garner success experiences, learn economic survival skills needed in the city, and alleviate the financial burden on their parents. Vocational programs and contact with Indian people employed at a variety of skilled and professional tasks can provide hope that a lower class socioeconomic existence is not inevitable. In one location, Indian adolescents have been hired and trained to provide assistance to other Indian adolescents in crisis. Indian adolescents also need Indian role models: Indian coaches, teachers, police, counselors, health workers from whom they can acquire a positive identity. Non-Indian psychiatric, health, or social workers can work closely with Indian community aides and health aides, thus compensating for their own cultural blinders, while at the same time involving Indian helpers in problem resolution among their own people and providing an Indian role model for the patient.[13] Involvement in Indian youth groups and political movements is often therapeutic for the Indian patient with an identity problem.

Identity problems among Indian people aged thirty or older occur within a context of repeated social and economic failure over many years. In addition to poverty and social isolation, this group of people commonly have chronic alcohol and drug abuse problems. Perhaps the best approach for these people is prevention and early case finding: adequate programs for adolescents and young adults would impede the evolution of this syndrome in adulthood. For those already entrenched in this lifestyle, halfway houses,, job opportunities, and support from Indian counselors (who can serve as role models) can aid in social rehabilitation. This group also needs successes in their lives, as well as contact with Indians who are outside of the day-labour/bar/jail circles to which they have become accustomed.

The linchpin in addressing this ethnic identity problem is Indian role models: Indian professionals, school or community aides, law enforcement officers or other Indian helpers who work with Indian people in trouble or crisis. As Indian patients and clients encounter coping Indian helpers, it becomes more and more awkward for them to maintain the image of Indians as 'bad,' 'irresponsible,' or 'incompetent.' They are ever more forced to see 'being Indian' as an asset in their lives rather than a liability, and to take responsibility for their own decisions and behaviour.

REFERENCES

1. Leon, R. L.: Maladaptive interaction between Bureau of Indian Affairs staff and Indian clients, *Amer. J. Orthopsychiatry* 35:723-728, 1965.
2. Westermeyer, J.: Absentee health workers and community participation, *Amer. J. Publ. Health* 62:1364-1369, 1972.
3. Westermeyer, J.: Indian powerlessness in Minnesota, *Society* 10:45-52, 1973.
4. Roberts, B. H., Myers, J. K.: Religion, national origin, immigration, and mental illness, *Amer. J. Psychiat.* 110:759-764, 1954.
5. Bloom, J. D.: Migration and psychopathology of Eskimo women, *Amer. J. Psychiat.* 130: 446-449, 1973.
6. Hallowell, A. I.: Values, acculturation and mental health, *Amer. J. Orthopsychiatry* 20: 732-743, 1950.
7. Sanua, V. D.: Differences in personality adjustment among different generations of American Jews and non-Jews in *Culture and Mental Health*, M. K. Opler (ed), (New York: Macmillan, 1959), p. 443-466.
8. Weppner, R. S.: Socioeconomic barriers as assimilation of Navajo migrants, *Human Organization* 31:303-314, 1972.
9. Fanon, F.: *Black Skin, White Masks* (New York: Grove, 1967.
10. Comer, J. P.: *Beyond Black and White* (New York: Quadrangle, 1972).
11. Vontress, C. E.: Self-hatred in Americans of African descent. Paper presented at Amer. Assn. Annual Meeting, New Orleans, 1972.
12. Attneave, C.: An analysis of therapeutic roles in tirbal setting and urban network intervention, *Family Process* 8:192-210, 1969.
13. Westermeyer, J.: Clinical guidelines for the cross-cultural treatment of chemical dependency, *Amer. J. Alcohol and Drug Abuse* 3:315-322, 1976.

APPENDIX 1

DEMOGRAPHIC AND CLINICAL CHARACTERISTICS TEN AMERICAN INDIAN PATIENTS UNIVERSITY OF MINNESOTA HOSPITALS

Number	Sex	Age	Marital Status	Tribe	Percentage Indian	Left Reservation at age:	Presenting problem	Significant history
1.	Male	15	single	Chippewa	8/8	2 years	Suicide attempt	14 foster homes since age 2.
2.	Female	12	single	Chippewa	4/8	5 years	Truancy, runaway, drug use	White father; Indian mother teaches children Indians are 'dirty;' 2 mo. in White foster home.
3.	Female	14	single	Chippewa	4/8	14 years	Suicide attempt	Death of Indian mother 2 yrs. ago; White father; 4 mo. in White foster home.
4.	Female	18	single	Chippewa	6/8	6 years	Suicide attempt	Recent death of both Indian parents, who had kept patient from Indian relatives and community; 6 mo. in various White
5.	Male	23	single	Sioux	8/8	2 years	Forensic evaluation for rape offense	9 foster homes since foster homes and institutions. age 2.
6.	Male	27	single	Chippewa	7/8	11 years	Alcoholic hallucinosis	A 'loner;' active as a 'Zionist.'
7.	Male	34	married	Chippewa	7/8	17 years	Acute and chronic alcoholism	Father forbade spoken Chippewa and Indian customs in home.
8.	Male	26	single	Chippewa	8/8	14 years	Withdrawal seizure from drug abuse	A 'loner;' extruded from Indian kin group.
9.	Male	42	single	Chippewa	8/8	18 years	Acute and chronic alcoholism	A 'loner;' sees all Indians as 'drunks.'
10.	Male	37	divorced	Sioux	8/8	18 years	Depression	A 'loner;' cannot tolerate Indian relatives for more than a few hours.

TABLE 1

DEMOGRAPHIC CHARACTERISTICS

Characteristic	Number of Patients
Sex	
Male	7
Female	3
Age	
less than 20 years	4
20-29 years	3
30-39 years	2
over 40 years	1
Marital status	
single	8
separated	1
divorced	1
Occupation	
student	6
truck driver	1
laborer	3

See Appendix 1 for tabulation of ten patients.

TABLE 2
ETHNIC AND RACIAL CHARACTERISTICS

Characteristic	Number n
Tribe	
Chippewa	
Sioux	
Percentage Indian Blood	
100%	
7/8	
3/4	
1/2	
Age at leaving reservation	
0-5 years	
5-10 years	
11-15 years	
over 15 years	

TABLE 3
CLINICAL AND CHILDHOOD CHARACTERISTICS

Characteristic	Number
Presenting problem	
Chemical dependency	
Suicide attempt	
Depression	
Truancy, runaway	
Forensic evaluation	
Parental loss before age 18	
None	
Parent(s) died	
Parent(s) divorced or eloped	
Foster placement during childhood	
No	
Yes	